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SUPREME COURT

OF THE

PHILIPPINES

FROM

AUGUST 24, 2010 TO AUGUST 31, 2010

SUPREME COURT
MANILA
2014

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by

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2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 6258. August 24, 2010]

LUZVIMINDA R. LUSTESTICA, *complainant, vs.* **ATTY. SERGIO E. BERNABE,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; NOTARY PUBLIC; THE NOTARIZATION BY A NOTARY PUBLIC CONVERTS A PRIVATE DOCUMENT INTO A PUBLIC DOCUMENT; EFFECT THEREOF, EXPLAINED.— We cannot overemphasize the important role a notary public performs. In *Gonzales v. Ramos*, we stressed that notarization is not an empty, meaningless routinary act but one invested with substantive public interest. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.

2. ID.; ID.; ID.; DUTY TO ASCERTAIN THE IDENTITIES OF THE PERSONS WHO APPEARED BEFORE HIM; VIOLATION IN CASE AT BAR.— The records undeniably show the gross negligence exhibited by the respondent in discharging his duties as a notary public. He failed to ascertain

the identities of the affiants before him and failed to comply with the most basic function that a notary public must do, *i.e.*, to require the parties' presentation of their residence certificates or any other document to prove their identities. Given the respondent's admission in his pleading that the donors were already dead when he notarized the Deed of Donation, we have no doubt that he failed in his duty to ascertain the identities of the persons who appeared before him as donors in the Deed of Donation. Under the circumstances, we find that the respondent should be made liable not only as a notary public but also as a lawyer. He not only violated the Notarial Law (Public Act No. 2103), but also Canon 1 and Rule 1.01 of the Code of Professional Responsibility. Section 1 of Public Act No. 2103 (Old Notarial Law) states: (a) The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. **The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed.** The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state. In turn, Canon 1 of the Code of Professional Responsibility provides that "[a] lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes." At the same time, Rule 1.01 of the Code of Professional Responsibility prohibits a lawyer from engaging in unlawful, dishonest, immoral or deceitful conduct. The respondent engaged in dishonest conduct because he falsely represented in his Acknowledgment that the persons who appeared before him were "known to him" to be the same persons who executed the Deed of Donation, despite the fact that he did not know them and did not ascertain their identities as he attested. Moreover, the respondent engaged in unlawful conduct when he did not observe the requirements under Section 1 of the Old Notarial Law that requires notaries public to certify that the party to the instrument has acknowledged and presented, before the notaries public, the proper residence certificate (or exemption from the residence certificate) and to enter the residence certificate's number, place, and date of issue as part of the certification. The unfilled spaces in the

Acknowledgment where the residence certificate numbers should have been clearly established that the respondent did not perform this legal duty.

3. **ID.; ID.; ID.; ID.; ID.; PENALTY OF DISBARMENT, IMPOSED.—** Considering these established rulings, read in light of the circumstances in the present case, we find that Atty. Bernabe should be **disbarred from the practice of law** and **perpetually disqualified from being commissioned as a notary public**. We emphasize that this is respondent's second offense and while he does not appear to have any participation in the falsification of the Deed of Donation, his contribution was his gross negligence for failing to ascertain the identity of the persons who appeared before him as the donors. This is highlighted by his admission in his Answer that he did not personally know the parties and was not acquainted with them. The blank spaces in the Acknowledgment indicate that he did not even require these parties to produce documents that would prove that they are the same persons they claim to be. As we emphasized in *Maligsa*: A lawyer shall at all times uphold the integrity and dignity of the legal profession. The bar should maintain a high standard of legal proficiency as well as honesty and fair dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end a member of the legal fraternity should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession. x x x (3) **DECLARE** respondent Atty. Sergio E. Bernabe liable for gross negligence, in the performance of his duties as notary public, and for his deceitful and dishonest attestation, in the course of administering the oath taken before him. Respondent Atty. Sergio E. Bernabe is hereby **DISBARRED** from the practice of law and his name is **ORDERED STRICKEN** from the Roll of Attorneys. He is also **PERPETUALLY DISQUALIFIED** from being commissioned as a notary public.

APPEARANCES OF COUNSEL

Quial Ginez & Beltran for complainant.

D E C I S I O N

PER CURIAM:

For consideration is the disbarment complaint filed by Luzviminda R. Lustestica (*complainant*) against Atty. Sergio E. Bernabe (*respondent*) for notarizing a falsified or forged Deed of Donation of real property despite the non-appearance of the donors, Benvenuto H. Lustestica (complainant's father) and his first wife, Cornelia P. Rivero, both of whom were already dead at the time of execution of the said document.

In his Answer,[1] the respondent admitted the fact of death of Benvenuto H. Lustestica and Cornelia P. Rivero, considering their death certificates attached to the complaint. The respondent claimed, however, that he had no knowledge that the real Benvenuto H. Lustestica and Cornelia P. Rivero were already dead at the time he notarized the Deed of Donation.[2] He also claimed that he exerted efforts to ascertain the identities of the persons who appeared before him and represented themselves as the donors under the Deed of Donation.[3]

After the submission of the respondent's Answer to the complaint, the Court referred the matter to the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP Commission on Bar Discipline*) for investigation, evaluation and recommendation. The IBP Commission on Bar Discipline made the following findings:

> The core issue is whether or not Respondent committed a falsehood in violation of his oath as a lawyer and his duties as Notary Public when he notarized the Deed of Donation purportedly executed by Benvenuto H. Lustestica and Cornelia P. Rivero as the donors and Cecilio R. Lustestica and Juliana Lustestica as the donees on 5 August 1994.

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[1] *Rollo,* pp.18-24.

[2] *Id.* at 19.

[3] *Ibid.*

Section 1 of Public Act No. 2013, otherwise known as the Notarial Law, explicitly provides:

> x x x **The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it** acknowledged that the same is his free act and deed. x x x.

As correctly observed by Complainant, Respondent's Acknowledgment is the best evidence that NO RESIDENCE CERTIFICATES were presented by the alleged donors and the donees. Had the parties presented their residence certificates to Respondent, it was his duty and responsibility under the Notarial Law to enter, as part of his certification, the number, place of issue and date of each residence certificate presented by the parties to the Deed of Donation. Respondent, however, failed to make the required entries. Respondent's claim that the persons who allegedly appeared before him and represented themselves to be the parties to the Deed of Donation showed their residence certificates and that he instructed his secretary to indicate the details of the residence certificates of the parties is self-serving and not supported by the evidence on record.

xxx xxx xxx

The fact that Respondent notarized a forged/falsified document is also undisputed not only by [the] strength of Complainant's documentary evidence but more importantly, by Respondent's own judicial admission. x x x. In view of Respondent's judicial admission that the alleged donors, BENVENUTO H. LUSTESTICA and his first wife, CORNELIA P. RIVERO, died on 7 September 1987 and 24 September 1984, respectively, it is beyond reasonable doubt that said donors could not have personally appeared before him on 5 August 1994 to [acknowledge] to him that they freely and voluntary executed the Deed of Donation. Moreover, x x x quasi-judicial notice of the Decision of the Municipal Trial Court finding accused CECILIO LUSTESTICA and JULIANA LUSTESTICA **GUILTY BEYOND REASONABLE DOUBT** as principals of the crime of falsification of public document.[4]

In his Report dated August 15, 2005, IBP Commissioner Leland R. Villadolid, Jr. found the respondent grossly negligent

[4] *Id.* at 80-83.

in the performance of his duties as notary public and recommended that the respondent's notarial commission be suspended for a period of one (1) year. The IBP Commissioner also recommended that a penalty ranging from reprimand to suspension be imposed against the respondent, with a warning that a similar conduct in the future will warrant an imposition of a more severe penalty.[5]

By Resolution No. XVII-2005-116 dated October 22, 2005, the Board of Governors of the IBP Commission on Bar Discipline adopted and approved the Report of the IBP Commissioner. The pertinent portion of this Resolution reads:

> [C]onsidering Respondent's gross negligence in the performance of his duties as Notary Public, Atty. Sergio E. Bernabe is hereby **SUSPENDED** from the practice of law for one (1) year and Respondent's notarial commission is **Revoked and Disqualified** from reappointment as Notary Public for two (2) years **with a notification that this suspension of one year must be served in succession to the initial recommendation of the IBP Board of Suspension of one year in CBD Case No. 04-1371.**[6]

From these undisputed facts, supervening events occurred that must be taken into consideration of the present case.

First, CBD Case No. 04-1371, entitled *Victorina Bautista, complainant, v. Atty. Sergio E. Bernabe, respondent*, which was the case referred to in Resolution No. XVII-2005-116, was docketed as A.C. No. 6963[7] before the Court. In a decision dated February 9, 2006, the Court revoked the respondent's notarial commission and disqualified him from reappointment as Notary Public for a period of two (2) years, for his failure to properly perform his duties as notary public when he notarized a document in the absence of one of the affiants. In addition, the Court suspended him from the practice of law for a period of one (1) year, with a warning that a repetition of the same or of similar acts shall be dealt with more severely.

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[5] *Id.* at 85.

[6] *Id.* at 75.

[7] February 9, 2006, 482 SCRA 1.

Second, on January 6, 2006, the respondent filed a motion for reconsideration of Resolution No. XVII-2005-116 before the IBP Commission on Bar Discipline. The respondent moved to reconsider the IBP Resolution, claiming that the penalty imposed for the infraction committed was too harsh. The motion was denied in Resolution No. XVII-2006-81, dated January 28, 2006,[8] for lack of jurisdiction of the IBP Commission on Bar Discipline, since the administrative matter had then been endorsed to the Court.

Third, on January 4, 2006, a motion for reconsideration (the same as the one filed with the IBP Commission on Bar Discipline) was filed by the respondent before the Court. In a *Minute* Resolution dated March 22, 2006, the Court noted the findings and recommendations in Resolution No. XVII-2005-116 and required the complainant to file her Comment to the respondent's motion for reconsideration. On April 28, 2006, the complainant filed her Comment praying for the denial of the motion.

On July 5, 2006, the Court issued a *Minute* Resolution noting the denial of the respondent's motion for reconsideration, by the IBP Commission on Bar Discipline, and the complainant's Comment to the respondent's motion before the Court.

Subsequently, on January 26, 2009, the Court declared the case closed and terminated after considering that no motion for reconsideration or petition for review, assailing both IBP resolutions, had been filed by the respondent.[9]

On October 8, 2009, the respondent, through a letter addressed to the Office of the Bar Confidant, requested that he be given clearance to resume the practice of law and to allow him to be commissioned as a notary public. In his letter, the respondent alleged that he has already served the penalties imposed against him in A.C. No. 6963 and the present case. He claimed that after the receipt of the IBP Resolutions in both cases, he did not practice his profession and had not been appointed or commissioned as a notary public.

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[8] *Rollo*, p. 93.

[9] *Id.* at 105.

The Office of the Bar Confidant

Acting on the respondent's letter, the Office of the Bar Confidant submitted a Report and Recommendation, which states:

1. The **EFFECTIVITY** of the respondent's suspension and disqualification should have been **COMMENCED** on the date of receipt of the Decision of the Court and not from the date of receipt of the Resolution of the IBP recommending the respondent's suspension from the practice of law and disqualification from being commissioned as notary public, it being recommendatory in nature;
2. The prayer of the respondent to resume his practice of law in Adm. Case No. 6963 be denied;
3. The respondent be **REQUIRED** to submit certification from competent courts and IBP that he has fully served the entire period of suspension and disqualification in Adm. Case No. 6963;
4. The Court may now **FINALLY RESOLVE** the findings and recommendation of the IBP in its Resolution No. XVII-2005-16, dated October 2005, in Adm. Case No. 6258, for final disposition of the case and for proper determination whether the order of suspension and disqualification in Adm. Case No. 6963 should be lifted after the respondent has satisfactorily shown that he has fully served the suspension and disqualification.[10]

The Court's Ruling

The findings of the Board of Governors of the IBP Commission on Bar Discipline are well-taken. We cannot overemphasize the important role a notary public performs. In *Gonzales v. Ramos*,[11] we stressed that notarization is not an empty, meaningless routinary act but one invested with substantive public interest. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without

[10] Report and Recommendation, Office of the Bar Confidant, pp. 4-5.

[11] 499 Phil. 345, 347 (2005).

further proof of its authenticity.[12] A notarized document is, by law, entitled to full faith and credit upon its face.[13] It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.[14]

The records undeniably show the gross negligence exhibited by the respondent in discharging his duties as a notary public. He failed to ascertain the identities of the affiants before him and failed to comply with the most basic function that a notary public must do, *i.e.*, to require the parties' presentation of their residence certificates or any other document to prove their identities. Given the respondent's admission in his pleading that the donors were already dead when he notarized the Deed of Donation, we have no doubt that he failed in his duty to ascertain the identities of the persons who appeared before him as donors in the Deed of Donation.

Under the circumstances, we find that the respondent should be made liable not only as a notary public but also as a lawyer. He not only violated the Notarial Law (Public Act No. 2103), but also Canon 1 and Rule 1.01 of the Code of Professional Responsibility.

Section 1 of Public Act No. 2103 (Old Notarial Law)[15] states:

> (a) The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. **The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed.** The certificate shall be made

[12] *Ibid.*

[13] *Ibid.*

[14] *Ibid.*

[15] The Old Notarial Law is applied considering that the notarization occurred during the law's effectivity.

under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state.

In turn, Canon 1 of the Code of Professional Responsibility provides that "[a] lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes." At the same time, Rule 1.01 of the Code of Professional Responsibility prohibits a lawyer from engaging in unlawful, dishonest, immoral or deceitful conduct.

In this regard, a reading of the respondent's Acknowledgment in the Deed of Donation shows how these provisions were violated by the respondent:

BEFORE ME, Notary Public for and in Bulacan this AUG 05 1994 day of August, 1994, personally appeared:

BENVENUTO H. LUSTESTICA: C.T.C. # _____:_____:_____

CORNELIA RIVERO : C.T.C. # _____:_____:_____

CECILIO LUSTESTICA : C.T.C. # _____:_____:_____

JULIANA LUSTESTICA : C.T.C. # _____:_____:_____

known to me and to me known to be the same persons who executed the foregoing instrument and acknowledged to me that the same are their free act and voluntary deed.[16]

The respondent engaged in dishonest conduct because he falsely represented in his Acknowledgment that the persons who appeared before him were "known to him" to be the same persons who executed the Deed of Donation, despite the fact that he did not know them and did not ascertain their identities as he attested.[17]

Moreover, the respondent engaged in unlawful conduct when he did not observe the requirements under Section 1 of the Old Notarial Law that requires notaries public to certify that the party to the instrument has acknowledged and presented, before the notaries public, the proper residence certificate (or exemption from the residence certificate) and to enter the residence

[16] *Rollo*, p. 11.

[17] *Id.* at 81-82.

certificate's number, place, and date of issue as part of the certification.[18] The unfilled spaces in the Acknowledgment where the residence certificate numbers should have been clearly established that the respondent did not perform this legal duty.

With these considerations, we find that the imposition of administrative sanctions for the above infractions committed is in order.

The IBP Commission on Bar Discipline recommended the penalty of suspension, for a period of one (1) year, from the practice of law and disqualification from reappointment as Notary Public for a period of two (2) years. Considering that this is already Atty. Bernabe's second infraction, we find the IBP's recommendation to be very light; it is not commensurate with his demonstrated predisposition to undertake the duties of a notary public and a lawyer lightly.

In *Maligsa v. Cabanting*,[19] we disbarred a lawyer for failing to subscribe to the sacred duties imposed upon a notary public. In imposing the penalty of disbarment, the Court considered the lawyer's prior misconduct where he was suspended for a period of six (6) months and warned that a repetition of the same or similar act would be dealt with more severely.[20]

In *Flores v. Chua*,[21] we disbarred the lawyer after finding that he deliberately made false representations that the vendor appeared before him when he notarized a forged deed of sale. We took into account that he was previously found administratively liable for violation of Rule 1.01 of the Code of Professional Responsibility (for bribing a judge) and sternly warned that a repetition of similar act or acts or violation committed by him in the future would be dealt with more severely.[22]

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[18] *De la Cruz v. Dimaano, Jr.*, A.C. No. 7781, September 12, 2008, 565 SCRA 1.

[19] A.C. No. 4539, May 14, 1997, 272 SCRA 408, 414.

[20] *Ibid.*

[21] A.C. No. 4500, April 30, 1999, 306 SCRA 465, 484.

[22] *Id.* at 485.

In *Traya v. Villamor*,[23] we found the respondent notary public guilty of gross misconduct in his notarial practice for failing to observe the proper procedure in determining that the person appearing before him is the same person who executed the document presented for notarization. Taking into account that it was his second offense, he was perpetually disqualified from being commissioned as a notary public.[24]

In *Social Security Commission v. Coral*,[25] we suspended indefinitely the notarial commission of the respondent lawyer who was found to have prepared, notarized and filed two complaints that were allegedly executed and verified by people who have long been dead. We also directed him to show cause why he should not be disbarred.[26]

Considering these established rulings, read in light of the circumstances in the present case, we find that Atty. Bernabe should be **disbarred from the practice of law** and **perpetually disqualified from being commissioned as a notary public**. We emphasize that this is respondent's second offense and while he does not appear to have any participation in the falsification of the Deed of Donation, his contribution was his gross negligence for failing to ascertain the identity of the persons who appeared before him as the donors. This is highlighted by his admission[27] in his Answer that he did not personally know the parties and was not acquainted with them. The blank spaces in the Acknowledgment indicate that he did not even require these parties to produce documents that would prove that they are the same persons they claim to be. As we emphasized in *Maligsa*:

> A lawyer shall at all times uphold the integrity and dignity of the legal profession. The bar should maintain a high standard of legal proficiency as well as honesty and fair dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society,

[23] A.C. No. 4595, February 6, 2004, 422 SCRA 293, 295.

[24] *Id.* at 297.

[25] A.C. No. 6249, October 14, 2004, 440 SCRA 291, 292 and 297.

[26] *Id.* at 297.

[27] *Rollo*, p. 19.

to the bar, to the courts and to his clients. To this end a member of the legal fraternity should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession.[28]

In light of the above findings and penalties, the respondent's request to be given clearance to resume the practice of law and to apply for a notarial commission, after serving the administrative sanctions in A.C. No. 6963, is now moot and academic. We, accordingly, deny the request for clearance to practice law and to apply for notarial commission.

WHEREFORE, premises considered, the Court resolves to:

(1) *NOTE* the letter dated October 8, 2009 of respondent Atty. Sergio E. Bernabe to the Office of the Bar Confidant.

(2) *ADOPT* the findings and recommendations of the IBP Commission on Bar Discipline *with MODIFICATION* on the administrative penalty imposed.

(3) *DECLARE* respondent Atty. Sergio E. Bernabe liable for gross negligence, in the performance of his duties as notary public, and for his deceitful and dishonest attestation, in the course of administering the oath taken before him. Respondent Atty. Sergio E. Bernabe is hereby *DISBARRED* from the practice of law and his name is *ORDERED STRICKEN* from the Roll of Attorneys. He is also *PERPETUALLY DISQUALIFIED* from being commissioned as a notary public.

(4) *DENY* the request for clearance to practice law and to apply for notarial commission of respondent Atty. Sergio E. Bernabe.

Let a copy of this Decision be attached to Atty. Sergio E. Bernabe's record, as a member of the bar, and copies furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts.

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[28] *Supra* note 19, at 413.

In view of the notarization of a falsified deed whose purported parties were already dead at the time of notarization, let a copy of this Decision be furnished the Office of the Prosecutor General, Department of Justice for whatever action, within its jurisdiction, it may deem appropriate to bring against Atty. Sergio E. Bernabe.

SO ORDERED.

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

EN BANC

[A.M. No. 08-19-SB-J. August 24, 2010]

ASSISTANT SPECIAL PROSECUTOR III ROHERMIA J. JAMSANI-RODRIGUEZ, *complainant, vs.* **JUSTICES GREGORY S. ONG, JOSE R. HERNANDEZ, and RODOLFO A. PONFERRADA, SANDIGANBAYAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; SUBSTANTIAL EVIDENCE; DEFINED.— By substantial evidence is meant such relevant evidence as a reasonable mind will accept as adequate to support a conclusion and does not mean just any evidence in the record of the case for, otherwise, no finding of fact would be wanting in basis. The test is whether a reasonable mind, after considering all the relevant evidence in the record of a case, would accept the findings of fact as adequate.

2. ID.; ID.; TRANSCRIPT OF THE STENOGRAPHIC NOTES; ACCEPTED AS THE FAITHFUL AND TRUE RECORD OF

THE PROCEEDINGS IN COURT.— A review of the transcripts of the stenographic notes for the hearings in which the offensive statements were supposedly uttered by them has failed to substantiate the complainant's charge. In the absence of a clear showing to the contrary, the Court must accept such transcripts as the faithful and true record of the proceedings, because they bear the certification of correctness executed by the stenographers who had prepared them.

3. POLITICAL LAW; SANDIGANBAYAN; COMPOSITION THEREOF, EXPLAINED.— Section 3 of PD 1606, the law establishing the Sandiganbayan, provides: Section 3. *Division of the Courts; Quorum.* - **The Sandiganbayan shall sit in three divisions of three Justices each. The three divisions may sit at the same time. Three Justices shall constitute a quorum for sessions in division**; Provided, that when the required quorum for the particular division cannot be had due to the legal disqualification or temporary disability of a Justice or of a vacancy occurring therein, the Presiding Justice may designate an Associate Justice of the Court, to be determined by strict rotation on the basis of the reverse order of precedence, to sit as a special member of said division with all the rights and prerogatives of a regular member of said division in the trial and determination of a case or cases assigned thereto, unless the operation of the court will be prejudiced thereby, in which case the President shall, upon the recommendation of the Presiding Justice, designate any Justice or Justices of the Court of Appeals to sit temporarily therein. An implementing rule is Section 3, Rule II of the *Revised Internal Rules of the Sandiganbayan*, *viz*: Section 3. *Constitution of the Divisions*. - **The Sandiganbayan shall sit in five (5) Divisions of three (3) Justices each, including the Presiding Justice**. The five (5) Divisions may sit separately at the same time. Each of the five (5) most senior Associate Justices including the Presiding Justice, shall be the Chairman of a Division; each of the five (5) Associate Justices next in rank shall be the Senior Member of a Division; and each of the last five (5) Associate Justices shall be the Junior Member of a Division.

4. ID.; ID.; AS A COLLEGIAL COURT; DEFINED AND CONSTRUED.— The Sandiganbayan is a collegial court. *Collegial* is defined as relating to a collegium or group of

colleagues. In turn, a *collegium* is "an executive body with each member having approximately equal power and authority." In a collegial court, therefore, the members act on the basis of consensus or majority rule. Thus, PD 1606, as amended, and the *Revised Internal Rules of the Sandiganbayan*, *supra*, call for the *actual* presence of the three Justices composing the Division to constitute a quorum to conduct business and to hold trial proceedings. Necessarily, the exclusion or absence of any member of a Division from the conduct of its business and from the trial proceedings negates the existence of a quorum and precludes collegiality. As if underscoring the need for all three members to be actually present and in attendance during sessions, Section 3 of PD 1606, as amended, further requires that:- xxx **when the required quorum for the particular division cannot be had due to the legal disqualification or temporary disability of a Justice or of a vacancy occurring therein, the Presiding Justice may designate an Associate Justice of the Court, to be determined by strict rotation on the basis of the reverse order of precedence, to sit as a special member of said division with all the rights and prerogatives of a regular member of said division in the trial and determination of a case or cases assigned thereto,** unless the operation of the court will be prejudiced thereby, in which case the President shall, upon the recommendation of the Presiding Justice, designate any Justice or Justices of the Court of Appeals to sit temporarily therein. Respondent Justices cannot lightly regard the legal requirement for all of them to sit together as members of the Fourth Division "in the *trial* and *determination* of a case or cases assigned thereto." The information and evidence upon which the Fourth Division would base any decisions or other judicial actions in the cases *tried* before it must be made *directly* available to each and every one of its members during the proceedings. This necessitates the *equal* and *full* participation of *each* member in the trial and adjudication of their cases. It is simply not enough, therefore, that the three members of the Fourth Division were within hearing and communicating distance of one another at the hearings in question, as they explained in hindsight, because even in those circumstances not *all* of them sat together *in session*. Indeed, the ability of the Fourth Division to function *as a collegial body* became

impossible when not all of the members sat together during the trial proceedings. The internal rules of the Sandiganbayan spotlight an instance of such impossibility. Section 2, Rule VII of the *Revised Internal Rules of the Sandiganbayan* expressly requires that rulings on oral motions made or objections raised *in the course of* the trial proceedings or hearings are to be made by the Chairman of the Division. Obviously, the rule cannot be complied with because Justice Ong, the Chairman, did not sit in the hearing of the cases heard by the other respondents. Neither could the other respondents properly and promptly contribute to the rulings of Justice Ong in the hearings before him.

5. REMEDIAL LAW; DISCIPLINE OF JUDGES; JUDICIAL DECORUM DEMANDS THAT THEY BEHAVE WITH DIGNITY AND ACT WITH COURTESY TOWARDS ALL WHO APPEAR BEFORE THEIR COURT; APPLICATION IN CASE AT BAR.— Even so, Justice Ong and Justice Hernandez admitted randomly asking the counsels appearing before them from which law schools they had graduated, and their engaging during the hearings in casual conversation about their respective law schools. They thereby publicized their professional qualifications and manifested a lack of the requisite humility demanded of public magistrates. Their doing so reflected a vice of self-conceit. We view their acts as bespeaking their lack of judicial temperament and decorum, which a judge worthy of the judicial robes should avoid especially during their performance of judicial functions. They should not exchange banter or engage in playful teasing of each other during trial proceedings (no matter how good-natured or even if meant to ease tension, as they want us to believe). Judicial decorum demands that they behave with dignity and act with courtesy towards all who appear before their court. Indeed, Section 6, Canon 6 of the *New Code of Judicial Conduct for the Philippine Judiciary* clearly enjoins that: Section 6. **Judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity**. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control. We point out that publicizing professional qualifications or boasting of having

studied in and graduated from certain law schools, no matter how prestigious, might have even revealed, on the part of Justice Ong and Justice Hernandez, their bias *for* or *against* some lawyers. Their conduct was impermissible, consequently, for Section 3, Canon 4 of the *New Code of Judicial Conduct for the Philippine Judiciary*, demands that judges avoid situations that may reasonably give rise to the suspicion or appearance of favoritism or partiality in their personal relations with individual members of the legal profession who practice regularly in their courts. Judges should be dignified in demeanor, and refined in speech. In performing their judicial duties, they should not manifest bias or prejudice by word or conduct towards any person or group on irrelevant grounds. It is very essential that they should live up to the high standards their noble position on the Bench demands. Their language must be guarded and measured, lest the best of intentions be misconstrued. In this regard, Section 3, Canon 5 of the *New Code of Judicial Conduct for the Philippine Judiciary*, mandates judges to carry out judicial duties with appropriate consideration for *all* persons, such as the parties, witnesses, lawyers, court staff, and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

6. ID.; ID.; SIMPLE MISCONDUCT; PENALTY.— Section 9, Rule 140 of the *Rules of Court*, as amended by A.M. No. 01-8-10 SC, classifies the offense of simple misconduct as a less serious charge, *viz*: Section 9. *Less Serious Charges.* – Less serious charges include: x x x 7. Simple Misconduct. Section 11, Rule 140 of the *Rules of Court* alternatively prescribes the sanctions on judges and justices guilty of a less serious charge, as follows: Section 11. *Sanctions*. – x x x B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed: 1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or 2. A fine of more than ₱10,000.00 but not exceeding ₱ 20,000.00. x x x On the other hand, unbecoming conduct is a light charge under Section 10, Rule 140 of the *Rules of Court*, thus: Section 10. *Light Charges.* – Light charges include: 1. Vulgar and unbecoming conduct; x x x and is punishable under Section 11(C), Rule 140 of the *Rules of Court* by a fine of not less than ₱1,000.00, but not exceeding ₱10,000.00; and/or censure, reprimand, or admonition with

warning. Analogizing from Section 55 of the *Uniform Rules on Administrative Cases in the Civil Service*, in an instance where the respondent is guilty of two or more charges, the penalty is that corresponding to the most serious charge, and the rest of the charges are considered as aggravating circumstances.

7. ID.; ID.; CONDUCT UNBECOMING; IMPOSABLE PENALTY. – In exercising his powers as Chairman of the Fourth Division, Justice Ong exuded an unexpectedly dismissive attitude towards the valid objections of the complainant, and steered his Division into the path of procedural irregularity. He thereby wittingly failed to guarantee that his Division's proceedings came within the bounds of substantive and procedural rules. We cannot, of course, presume that he was unaware of or unfamiliar with the pertinent law and correct procedure, considering his already long tenure and experience as of then as a Justice of the Sandiganbayan, having risen from Associate Justice to Chairman of his Division. We hold that the condign and commensurate penalty to impose on Justice Ong is a fine of ₱15,000.00, after taking into consideration the mitigating circumstance that this administrative offense was his first and the aggravating circumstance of the light charge of unbecoming conduct. The penalty goes with a stern warning that a repetition of the same or similar of such offenses shall be dealt with more severely. x x x Although Justice Hernandez is liable for the less serious charge of simple misconduct, aggravated by a light charge but appreciating his reliance without malice and the mitigating circumstance of this offense being his first, the Court admonishes him with a warning that a repetition of the same or similar offenses shall be dealt with more severely. The liability of Justice Ponferrada for the less serious charge of simple misconduct, without any aggravating circumstance, is obliterated by his reliance without malice and the mitigating circumstance of its being a first offense. However, he is warned to be more cautious about the proper procedure to be taken in proceedings before his court.

NACHURA, *J., dissenting opinion:*

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; MISCONDUCT; DEFINED.— Misconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice

prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper, or unlawful conduct motivated by a premeditated, obstinate, or intentional purpose.

2. ID.; ID.; ID.; NOT COMMITTED WHEN THERE IS AN HONEST BELIEF THAT THE PROCEDURE UNDERTAKEN WAS DESIGNED TO FACILITATE AND SERVE THE BEST INTEREST OF THE SERVICE; APPLICATION.— In all, misconduct, simple or gross, cannot be imputed to respondent Justices as they were of the honest belief that the procedure undertaken was designed to facilitate and serve the best interest of the service. Even the *ponencia* concedes that respondent Justices "had not been ill-motivated in adopting the erroneous procedure, for all they had sought to accomplish thereby was to expedite their disposition of cases in the provinces." There was no blatant disregard of P.D. No. 1606, as amended, the Rules of Court, and the Revised Internal Rules of the Sandiganbayan because as explained by respondent Justices they ensured the existence of a quorum since all three members of the Division were present in the same courtroom or venue; the collegial nature of the Division as required by law was maintained; and the members of the Division were within hearing or communicating distance of one another which allowed them to readily confer with each other and resolve any issue that arose in the cases being heard by them. Significantly, the parties in the cases did not object to the arrangement, and were therefore deemed estopped from subsequently assailing the proceedings to which they had given their full assent.

3. ID.; ID.; ID.; THE IMPUTATION OF ARROGANCE AND CONCEIT IS MADE BY THE HEARER OR OBSERVER; EXPLAINED.— We cannot ascribe arrogance to an innocuous question such as which law school counsel attended if no further comments derogatory to the schools or counsels are uttered. The question is not *per se* conceited. The imputation of arrogance and conceit is made by the hearer or observer. Respondent Justices Ong and Hernandez only admitted to posing their queries in jest, and were intended to break the monotony and seriousness of the courtroom setting. It would take a quantum leap to impute arrogance and judicial impropriety to such a statement and translate it into conduct unbecoming a magistrate.

ABAD, *J., dissenting opinion:*

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; MISCONDUCT; CONSTRUED; NOT PRESENT IN CASE AT BAR.— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules. Otherwise, the misconduct is only simple. To be considered misconduct, the transgression must have been committed by unlawful behavior or gross negligence. Here, respondent Justices conducted the separate and simultaneous hearings in the same venue and within hearing and communicating distance of each other. They adopted this arrangement to maximize their presence in Davao City and render speedy justice to the parties that wait months before the Court could visit Mindanao again. The actions of the Justices also resulted in saving the litigants, the lawyers, the witnesses, and the Court considerable time, effort, and resources. None of the Justices was motivated by corruption or an illegal purpose; on the contrary, they did everything in good faith. In fact, complainant Rodriguez herself recognized in her memorandum to her superior that it was commendable on the part of the Justices to have adopted the procedure which turned out to be advantageous to the prosecution. Clearly, there is nothing unlawful or grossly negligent in what respondent Justices did. At most, it could only be regarded as irregular, which is not sufficient to make them liable for any misconduct.

2. POLITICAL LAW; SANDIGANBAYAN; AS A COLLEGIAL COURT, EACH MEMBER HAS APPROXIMATELY EQUAL POWER AND AUTHORITY.— As the majority decision noted, the Sandiganbayan being a collegial court, each member has approximately equal power and authority. The members act on the basis of consensus or majority rule. Thus, while the Chairman supervises and directs the proceedings of the Division, his authority is limited to that extent. All Division members share any decision on what proceedings to adopt in the conduct of its business. They act by consensus or majority rule. In fact, respondent Justices pointed out in their respective comments that they adopted the challenged procedure in the

> best interest of the service. This admission negates any impression that Chairman Ong imposed his will on Justices Hernandez and Ponferrada or that the latter two merely relied on their Chairman's judgment. It is not fair to conclude that since Justices Hernandez and Ponferrada were mere members, they had no voice in how their Division conducted its business and proceedings. No less than the Code of Judicial Conduct requires them to be independent from judicial colleagues in respect of decisions which they are obliged to make independently.

D E C I S I O N

BERSAMIN, *J.*:

Rohermia J. Jamsani-Rodriguez, an Assistant Special Prosecutor III in the Office of the Special Prosecutor, Office of the Ombudsman initiated this administrative matter by filing an affidavit-complaint dated October 23, 2008 to charge Sandiganbayan Justices Gregory S. Ong (Justice Ong); Jose R. Hernandez (Justice Hernandez); and Rodolfo A. Ponferrada (Justice Ponferrada), who composed the Fourth Division of the Sandiganbayan (Fourth Division), with Justice Ong as Chairman, at the time material to the complaint, with (1) grave misconduct, conduct unbecoming a Justice, and conduct grossly prejudicial to the interest of the service; (2) falsification of public documents; (3) improprieties in the hearing of cases; and (4) manifest partiality and gross ignorance of the law.[1]

Before anything more, the Court clarifies that this decision is limited to the determination of the administrative culpability of the respondent Justices, and does not extend to the ascertainment of whatever *might be* the effects of any irregularity they committed as members of the Fourth Division on the trial proceedings. This clarification stresses that the proceedings, if procedurally infirm, resulted from the acts of the Sandiganbayan as a collegial body, not from their acts as individual Justices. The remedy against any procedural infirmity is not administrative but judicial.

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[1] *Rollo,* pp. 4-19.

Details of the Charges

A.
Grave Misconduct, Conduct Grossly Prejudicial to the Interest of the Service, and Falsification of Public Documents

Under Section 1, Rule IV of the *Revised Internal Rules of the Sandiganbayan*, cases originating from Luzon, Visayas and Mindanao shall be heard in the region of origin, except only when the greater convenience of the parties and of the witnesses or other compelling considerations require the contrary.[2] Thus, for the period from April 24 to April 28, 2006, the Fourth Division scheduled sessions for the trial of several cases in the Hall of Justice in Davao City.

Prior to the scheduled sessions, or on April 17, 2006, the complainant sent a memorandum to Special Prosecutor Dennis M. Villa-Ignacio (Special Prosecutor Villa-Ignacio) to invite his attention to the irregular arrangement being adopted by the Fourth Division in conducting its provincial hearings.[3] The memorandum reads as follows:

The Prosecution Bureau IV is due to leave for Davao City on April 23, 2006 for their scheduled hearing which will be held on April 24 to 28, 2006. **In conducting provincial hearing, the Fourth Division has adopted a different procedure. They do not sit as**

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[2] Section 1, Rule IV, reads:

Section 1. *Official Station; Place of Holding Sessions*. — The Sandiganbayan shall have its principal office in the Metro Manila area and shall hold sessions thereat for the trial and resolution of cases filed with it: **Provided, however, that cases originating from Luzon, Visayas and Mindanao, shall be heard in the region of origin, except only when the greater convenience of the parties and of the witnesses or other compelling considerations require the contrary, in which instance a case originating from one region may be heard in another region**: Provided, further, that for this purpose the Presiding Justice shall authorize any Division or Divisions of the Sandiganbayan to hold sessions at any time and place outside Metro Manila, and, where the greater interest of justice so requires, outside the Philippines.

[3] *Rollo*, pp. 20-21.

collegial body, instead they divide the division into two. In such a manner, the Chairman will hear some of the cases alone and the other members will hear other cases, conducting hearing separately and simultaneously.

We find this procedure to be advantageous to the Prosecution and also commendable on the part of the Justices. While there are no objections manifested by the defense lawyers, we are apprehensive of the consequences, considering that this constitutes procedural lapses. In a case decided by the Supreme Court, the conviction of the accused by the Sandiganbayan (Second Division) was invalidated by the court when it was shown that the members of the court who heard his case were constantly changing. The Petitioner assailed the decision of the Sandiganbayan in its capacity as a trial court.

In one of her hearings, the undersigned has already called the attention of the Hon. Chairman and expresses (*sic*) her concern on the matter, and even opined that they might be charged of falsification, by issuing orders that they heard the cases as a collegial body, when in fact only the Chairman was present during the trial and the other members are hearing cases in the other chamber.

The Chairman, however, welcomes any question on the procedure they are presently adopting.

We do not want to take chances. In cases where conviction are issued, the accused would surely assail this procedure.

For your information and appropriate action.[4]

The complainant stated in her affidavit-complaint that Special Prosecutor Villa-Ignacio responded to her memorandum by instructing her and the other Prosecutors to object to the arrangement and to place their objections on record.

During the hearing in Davao City, the Fourth Division did not sit as a collegial body. Instead, Justice Ong heard cases by himself, while Justice Hernandez and Justice Ponferrada heard the other cases together. Complying with Special Prosecutor

[4] *Id.*, pp. 20-21 (bold prints are not in the original but provided for emphasis).

Villa-Ignacio's instructions, the complainant objected to the arrangement, but her objections were brushed aside.[5]

The complainant averred that her recording of her continuing objections incurred for her the ire of the Justices; and that faced with such predicament and out of her desire to avoid any procedural defects, she decided to forego the presentation of NBI Investigator Atty. Roel Plando as her witness in Criminal Cases Nos. 28103 to 28104 entitled *People of the Philippines v. Payakan Tilendo* in the last hearing date of April 27, 2006. Instead, she requested another Prosecutor to inform the Fourth Division that she was then suffering from migraine, and to request the cancellation of the hearing.

The complainant was surprised to learn later on that the Fourth Division had issued a warrant for the arrest of Atty. Plando for his non-appearance at the hearing.

On May 8, 2006, Atty. Plando filed a *motion to lift bench warrant,*[6] in which he explained that he had arrived in Davao City in the morning of April 27, 2006 in order to appear in court, and had called up the complainant, who had told him that she would not be presenting him as a witness due to lack of time for the necessary conference; and that she had also told him about her having migraine on that morning.

On May 15, 2006, the Fourth Division directed the complainant to comment on Atty. Plando's motion. In her *comment* dated May 24, 2006,[7] the complainant averred that she had decided "not to proceed with the presentation of Mr. Plando on April 27, 2006 due to her apprehension that the Honorable Court might again conduct the hearing in division"; and that incurring the ire of the Justices by her continuing objections to the hearing procedure had been a stressful situation that had induced her migraine.

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[5] *See* Transcript of Stenographic Notes (TSN), April 24, 2006, pp. 4-5; *rollo*, pp. 449-450.

[6] *Rollo*, pp. 25-27.

[7] *Id.*, pp. 29-31.

Although lifting the warrant of arrest issued against Atty. Plando through the order dated May 26, 2006,[8] the Fourth Division directed the complainant in the same order to answer questions from the court itself on June 6, 2006 "relative to statements made in [her] Comment dated May 24, 2006."

For the June 6, 2006 hearing, the complainant was accompanied by Acting Director Elvira Chua of Bureau IX, Director Somido, and Stenographer Yolanda Pineda. According to the complainant, Justice Hernandez berated her for bringing her own stenographer. The Fourth Division then directed Stenographer Pineda to show cause why she should not be cited in contempt for taking notes without prior leave of court.[9]

Complying with the directive to show cause, Pineda submitted an *explanation/compliance,*[10] explaining that Director Chua had asked her to attend the hearing on June 6, 2006, and to take stenographic notes of the proceedings.

Director Chua confirmed Pineda's explanation in her own *manifestation and explanation,*[11] stating that the complainant had requested that a stenographer from the Office of the Special Prosecutor be tasked to take notes at the hearing; and that "on 27 April 2006 when Prosecutor Rohermia Rodriguez was supposed to present her NBI Agent witness in Davao City, she left Davao at 4:30 in the morning of the said date so that it would be physically impossible for her to be in court at 8:30 in the morning."

The Fourth Division issued an order on June 20, 2006,[12] directing the complainant to comment on Director Chua's *manifestation and explanation,* and to explain why she should not be cited in contempt of court for failing to present the NBI agent as a witness on April 26 and 27, 2006. She complied by

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[8] *Id.*, p. 32-33.

[9] TSN, June 6, 2006, p. 4, *rollo*, pp. 44-45.

[10] *Rollo*, pp. 39-40.

[11] *Id.*, pp. 63-67.

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

submitting her *compliance* on July 10, 2006.[13] The incident has remained unresolved by the Fourth Division.

The complainant contended that by not acting as a collegial body, respondent Justices not only contravened Presidential Decree (PD) No. 1606, but also committed acts of falsification by signing their orders, thereby making it appear that they had all been present during the hearing when in truth and in fact they were not.

B.
Improprieties During Hearings Amounting to Gross Abuse of Judicial Authority and Grave Misconduct

Allegedly, Justice Ong and Justice Hernandez made the following intemperate and discriminatory utterances during hearings.

Firstly, the complainant alleged that Justice Ong uttered towards the complainant during the hearing held in Cebu City in September 2006 the following:

We are playing Gods here, we will do what we want to do, your contempt is already out, we fined you eighteen thousand pesos, even if you will appeal, by that time I will be there, Justice of the Supreme Court.

Secondly, Justice Ong often asked lawyers from which law schools they had graduated, and frequently inquired whether the law school in which Justice Hernandez had studied and from which he had graduated was better than his (Justice Ong's) own *alma mater*. The complainant opined that the query was manifestly intended to emphasize that the San Beda College of Law, the *alma mater* of Justice Ong, and the UP College of Law, that of Justice Hernandez, were the best law schools.

Thirdly, on another occasion in that hearing in Cebu City in September 2006, Justice Hernandez discourteously shouted at Prosecutor Hazelina Tujan-Militante, who was then observing trial from the gallery: *You are better than Director Somido?*

[13] *Id.*, pp. 122-130.

Are you better than Director Chua? Are you here to supervise Somido? Your office is wasting funds for one prosecutor who is doing nothing.

Finally, Justice Hernandez berated Atty. Pangalangan, the father of former UP Law Dean Raul Pangalangan, thus:

Just because your son is always nominated by the JBC to Malacañang, you are acting like that! Do not forget that the brain of the child follows that of their (sic) mother.

C.

Justices Ong, Hernandez, and Ponferrada's Gross Ignorance of the Law Amounting to Manifest Partiality for Dismissing Criminal Case No. 25801, Entitled *People v. Puno,* upon a Demurrer to Evidence

In imputing manifest partiality to respondent Justices, the complainant cited the Fourth Division's resolution granting accused Ronaldo V. Puno's demurrer to evidence in Criminal Case No. 25801, and dismissing the case upon a finding that the assailed contracts had never been perfected,[14] which finding was contrary to the evidence of the Prosecution.

The complainant insisted that the conclusion that the assailed contracts had never been perfected was based on a National Police Commission (NAPOLCOM) resolution, which the Fourth Division appreciated in the guise of taking judicial notice. She contended that taking judicial notice of the NAPOLCOM resolution upon a demurrer to evidence was highly erroneous, and constituted gross ignorance of the law.

Comments of Respondents

Maintaining their innocence of the charges, Justice Ong and Justice Hernandez filed their *joint comment.*[15] Although admitting having tried cases in the provinces by apportioning or assigning the cases scheduled for hearing among themselves, they emphasized that they had nonetheless ensured at the outset that: *first*, there

[14] *Id.*, pp. 285-361.

[15] *Id.*, pp. 402-441.

was a quorum, *i.e.*, all the three members of the Division were present in the same courtroom or venue, thereby preserving the collegial nature of the Division as required by law, specifically Section 3 of PD 1606; *second*, the members of the Division were within hearing or communicating distance of one another, such that they could readily confer with each other in order to address or resolve any issue that arose in the cases separately being heard by them; and, *third*, the parties did not object to the arrangement, and thus could not later on assail the proceedings to which they had given their full assent, based on the equitable principle of estoppel.

Justice Ong and Justice Hernandez averred that their arrangement had been adopted in the best interest of the service, because they had thereby expedited the disposition of their cases, resulting in considerable savings in time, effort, and financial resources of the litigants, lawyers, witnesses, and the court itself; but that they had meanwhile discontinued the arrangement after it had piled up so much work at a much faster pace than the Fourth Division could cope with. They argued that even assuming, *arguendo*, that the arrangement had been irregular, it could only be the subject of a petition for *certiorari* on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, not an administrative complaint, due to its amounting only to a mere procedural lapse.

Justice Ong and Justice Hernandez refuted the complainant's allegation on their use of intemperate and discriminatory language by attaching the transcript of stenographic notes to prove that there was no record of the intemperate and discriminatory utterances on the date specified by the complainant.[16] Justice Ong dared the complainant to produce a copy of the order that contained his following alleged utterance:

We are playing Gods here, we will do what we want to do, your contempt is already out, we fined you eighteen thousand pesos, even if you will appeal, by that time I will be there, Justice of the Supreme Court.

[16] *See* TSN of the proceedings taken on August 30, 2006, Annex 4, Rejoinder.

Justice Ong and Justice Hernandez admitted having asked the lawyers appearing before them about the law schools they had graduated from, but explained that they had done so casually and conversationally, with the scenario playing out between two Justices teasing each other from time to time. They claimed that their queries were usually made in jest, and were intended to break the monotony and seriousness of the courtroom setting.

Justice Hernandez denied having shouted at Prosecutor Tujan-Militante, but conceded the possibility of having observed that her presence in Cebu City was a waste of government funds, because she was not one of the Prosecutors assigned to prosecute any of the scheduled cases.

On the charge of gross ignorance of the law amounting to manifest partiality (relating to the grant of the demurrer to evidence in Criminal Case No. 25801), Justice Ong and Justice Hernandez pointed out that the Supreme Court had already sustained their action by dismissing the petition for review of the Special Prosecutor through the resolution issued in G.R. No. 171116 on June 5, 2006.[17]

Justice Ponferrada's separate *comment*[18] echoed his co-respondents' assertions in their *joint comment*.

Report of the Court Administrator

In our resolution dated January 20, 2009,[19] we noted the *comments* of respondent Justices, and referred the matter to the Court Administrator for evaluation, report and recommendation.

In his report dated October 6, 2009,[20] then Court Administrator Jose P. Perez, now a Member of the Court, recommended the dismissal of the charges for lack of merit, because:

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[17] *Rollo,* p. 513.

[18] *Id.,* pp. 519-530.

[19] *Id.,* p. 531.

[20] See *Report* dated October 6, 2009; part of the *rollo*, but without pagination.

Viewed in the foregoing light, the charge of grave misconduct cannot stand. It is understood that grave misconduct is such which affects a public officer's performance of his duties as such officer and not only that which affects his character as a private individual and requires reliable evidence showing that the judicial act complained of were corrupt or inspired by an intention to violate the law. Our perusal of the record shows that respondent's adoption of the assailed practice was not motivated by corruption and/or an illegal purpose. Indeed, the best interest of the service was clearly aimed at. To justify the taking of drastic disciplinary action, the law requires that the error or mistake if there be such must be gross or patent, malicious, deliberate or in bad faith.

For the very same reasons, respondents cannot likewise be held liable for falsification of public documents arising out of the alleged falsity of the collegiality reflected in the minutes and/or stenographic notes taken during the proceedings in which the assailed practice was adopted. For liability to be assessed for the offense of falsification of official documents thru untruthful narration of the facts, the rule is settled that the following elements should concur, *viz*: (a) the offender makes in a document an untruthful statement in a narration of facts; (b) the offender has a legal obligation to disclose the truth of the facts narrated; (c) the facts narrated by the offender are absolutely false; and (d) the perversion of truth in the narration of facts was made with wrongful intent to injure a third person. The absence of the enumerated elements clearly discounts respondents' liability for said offense.

Inasmuch as mere allegation is not evidence, it is a fundamental evidentiary rule that the party who alleges a fact must prove the same. For all of complainant's imputations against respondents, the record is bereft of any showing that the latter are guilty of oppressive conduct and/or grave misconduct, particularly with reference to the comment the former was required to file regarding the motion to lift bench warrant filed by the witness Roel Plando in Criminal Case Nos. 28103-104. Given the variance between the allegations in said motion and the reasons complainant initially advanced for the non-presentation of said witness at the April 27, 2006 hearing in said cases, respondents were clearly acting within their prerogative when they decided to clarify the matter from the former and her colleague, Prosecutor Almira Abella-Orfanel. Although subsequently required to explain why she should not be cited for contempt in the June 20, 2006 order issued in the case,

the record is, more importantly, bereft of any showing that complainant was, in fact, declared in contempt of court or actually fined in the sum of ₱18,000.00 as purportedly threatened by respondents.

Squarely refuted in the affidavits executed by her colleagues, namely, Prosecutors Cornelio Somido, Almira Abella-Orfanel, Elvira Chua and Rabenranath Uy, complainant's bare allegations clearly deserve scant consideration insofar as they impute such further irregularities against respondents as threatening or humiliating her during the hearing/s conducted in the aforesaid cases and/or causing disrespect to Special Prosecutor Dennis Villa-Ignacio or otherwise allowing interference in the latter's handling of a case. Because administrative proceedings like the one at bench are governed by the substantial evidence rule, the same may be said of the disparaging comments respondents are supposed to have made regarding the *barong* and/or intelligence of practitioners appearing before them which are, on the whole, devoid of any bases in the record outside of complainant's averments and the affidavit belatedly executed by Assistant Special Prosecutor Ma. Hazelina Tujan-Militante. By substantial evidence is meant such relevant evidence as a reasonable mind will accept as adequate to support a conclusion and does not mean just any evidence in the record of the case for, otherwise, no finding of fact would be wanting in basis. The test is whether a reasonable mind, after considering all the relevant evidence in the record of a case, would accept the findings of fact as adequate.

As regards the charge of improprieties, it appears that the complainant has not discharged the onus of proof by substantial evidence. The intemperate and immoderate statements attributed to respondents are, to repeat, without sufficient substantiation. What comes near to but is not equivalent to impropriety is the jocular banter admitted by respondents about their respective alma maters, the intention being to break the usual monotony and seriousness of the courtroom setting or to put practitioners appearing before them at ease. It cannot be said that public confidence in the Judiciary was eroded by the conduct. No discourtesy was shown towards either the parties or to each other.

As for the charge of manifest partiality insofar as the grant of the demurrer in Criminal Case No. 25801 is concerned, suffice it to say that members of the bench like respondents are presumed to have acted regularly and in the manner that preserves the ideal of the cold neutrality of an impartial judge. Because *notatu dignum* is

the presumption of regularity in the performance of a judge's function, the rule is settled that bias, prejudice and undue interest cannot be presumed lightly. Mere suspicion that the judge is partial to a party is, consequently, not enough; there should be adequate evidence to prove the charge. As a matter of policy, the acts of a judge in his judicial capacity are not subject to disciplinary action-he cannot be subject to civil, criminal or administrative liability for any of his official acts, no matter how erroneous, as long as he acts in good faith. These principles find resonance in the case at bench where, in addition to the total dearth of evidence to prove the charge of manifest partiality, it appears that respondents' grant of the demurrer in Criminal Case No. 25801 was affirmed in the following wise in the June 5, 2006 resolution issued by the Second Division of the Supreme Court in G.R. No. 171116, to wit:

> "G.R. No. 171116 (PEOPLE OF THE PHILIPPINES *VS.* REYNALDO PUNO). xx xx On the basis thereof, the Court resolves to DENY the petition for review on *certiorari* dated 2 March 2006 assailing the resolutions of the Sandiganbayan for petitioner's failure to submit a valid affidavit of service of copies of the petition on respondent and the Sandiganbayan in accordance with Sections 3 and 5, Rule 45 and Section 5(d), Rule 56 in relation to Section 13, Rule 13 of the Rules, there being no jurat and signature of the affiant in the attached affidavit of service of the petition.
>
> "In any event, the petition is an improper remedy and ***failed to sufficiently show that the Sandiganbayan had committed any reversible error in the questioned judgment*** to warrant the exercise by this Court of its discretionary appellate jurisdiction in this case x x x." (emphasis supplied)

Ruling of the Court

The Court partly adopts the findings and recommendations of the Court Administrator.

A.
Respondents' Violation of the provisions of PD 1606 and *Revised Internal Rules of the Sandiganbayan*

Respondent Justices contend that they preserved the collegiality of the Fourth Division despite their having separately conducted

hearings, considering that the three of them were in the same venue and were acting within hearing and communicating distance of one another.

The contention is not well-taken.

Section 3 of PD 1606,[21] the law establishing the Sandiganbayan, provides:

> Section 3. *Division of the Courts; Quorum.* - **The Sandiganbayan shall sit in three divisions of three Justices each. The three divisions may sit at the same time.**
>
> **Three Justices shall constitute a quorum for sessions in division**; Provided, that when the required quorum for the particular division cannot be had due to the legal disqualification or temporary disability of a Justice or of a vacancy occurring therein, the Presiding Justice may designate an Associate Justice of the Court, to be determined by strict rotation on the basis of the reverse order of precedence, to sit as a special member of said division with all the rights and prerogatives of a regular member of said division in the trial and determination of a case or cases assigned thereto, unless the operation of the court will be prejudiced thereby, in which case the President shall, upon the recommendation of the Presiding Justice, designate any Justice or Justices of the Court of Appeals to sit temporarily therein.

An implementing rule is Section 3, Rule II of the *Revised Internal Rules of the Sandiganbayan, viz*:

> Section 3. *Constitution of the Divisions*. - **The Sandiganbayan shall sit in five (5) Divisions of three (3) Justices each, including the Presiding Justice.** The five (5) Divisions may sit separately at the same time. Each of the five (5) most senior Associate Justices including the Presiding Justice, shall be the Chairman of a Division; each of the five (5) Associate Justices next in rank shall be the Senior Member of a Division; and each of the last five (5) Associate Justices shall be the Junior Member of a Division.

Under the foregoing provisions, the Sandiganbayan is a collegial court. *Collegial* is defined as relating to a collegium or group of colleagues. In turn, a *collegium* is "an executive body with

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[21] As amended by Republic Act No. 8249.

each member having approximately equal power and authority."[22] In a collegial court, therefore, the members act on the basis of consensus or majority rule. Thus, PD 1606, as amended, and the *Revised Internal Rules of the Sandiganbayan, supra,* call for the *actual* presence of the three Justices composing the Division to constitute a quorum to conduct business and to hold trial proceedings. Necessarily, the exclusion or absence of any member of a Division from the conduct of its business and from the trial proceedings negates the existence of a quorum and precludes collegiality.

As if underscoring the need for all three members to be actually present and in attendance during sessions, Section 3 of PD 1606, as amended, further requires that:-

> xxx **when the required quorum for the particular division cannot be had due to the legal disqualification or temporary disability of a Justice or of a vacancy occurring therein, the Presiding Justice may designate an Associate Justice of the Court, to be determined by strict rotation on the basis of the reverse order of precedence, to sit as a special member of said division with all the rights and prerogatives of a regular member of said division in the trial and determination of a case or cases assigned thereto**, unless the operation of the court will be prejudiced thereby, in which case the President shall, upon the recommendation of the Presiding Justice, designate any Justice or Justices of the Court of Appeals to sit temporarily therein.

Respondent Justices cannot lightly regard the legal requirement for all of them to sit together as members of the Fourth Division "in the *trial* and *determination* of a case or cases assigned thereto." The information and evidence upon which the Fourth Division would base any decisions or other judicial actions in the cases *tried* before it must be made *directly* available to each and every one of its members during the proceedings. This necessitates the *equal* and *full* participation of *each* member in the trial and adjudication of their cases. It is simply not enough, therefore, that the three members of the Fourth Division were within hearing and communicating distance of one another at

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[22] Webster's *Third New World International Dictionary*, 445 (1993).

the hearings in question, as they explained in hindsight, because even in those circumstances not *all* of them sat together *in session.*

Indeed, the ability of the Fourth Division to function *as a collegial body* became impossible when not all of the members sat together during the trial proceedings. The internal rules of the Sandiganbayan spotlight an instance of such impossibility. Section 2, Rule VII of the *Revised Internal Rules of the Sandiganbayan* expressly requires that rulings on oral motions made or objections raised *in the course of* the trial proceedings or hearings are to be made by the Chairman of the Division. Obviously, the rule cannot be complied with because Justice Ong, the Chairman, did not sit in the hearing of the cases heard by the other respondents. Neither could the other respondents properly and promptly contribute to the rulings of Justice Ong in the hearings before him.

Moreover, the respondents' non-observance of collegiality contravened the very purpose of trying criminal cases cognizable by Sandiganbayan before a Division of *all* three Justices. Although there are criminal cases involving public officials and employees triable before single-judge courts, PD 1606, as amended, has *always* required a Division of three Justices (not one or two) to try the criminal cases cognizable by the Sandiganbayan, in view of the accused in such cases holding higher rank or office than those charged in the former cases. The three Justices of a Division, rather than a single judge, are naturally expected to exert keener judiciousness and to apply broader circumspection in trying and deciding such cases. The tighter standard is due in part to the fact that the review of convictions is elevated to the Supreme Court generally *via* the discretionary mode of petition for review on *certiorari* under Rule 45, *Rules of Court*, which eliminates issues of fact, instead of *via* ordinary appeal set for the former kind of cases (whereby the convictions still undergo intermediate review before ultimately reaching the Supreme Court, if at all).

In *GMCR, Inc. v. Bell Telecommunication Philippines, Inc.*,[23] the Court delved on the nature of a collegial body, and how the

[23] G.R. Nos. 126496 and 126526, April 30, 1997, 271 SCRA 790.

act of a single member, though he may be its head, done without the participation of the others, cannot be considered the act of the collegial body itself. There, the question presented was whether Commissioner Simeon Kintanar, as chairman of the National Telecommunications Commission (NTC), could alone act in behalf of and bind the NTC, given that the NTC had two other commissioners as members. The Court ruled:

> First. We hereby declare that the NTC is a collegial body **requiring a majority vote out of the three members of the commission in order to validly decide a case or any incident therein**. Corollarily, **the vote alone of the chairman of the commission, as in this case, the vote of Commissioner Kintanar, absent the required concurring vote coming from the rest of the membership of the commission to at least arrive at a majority decision, is not sufficient to legally render an NTC order, resolution or decision.**
>
> Simply put, Commissioner Kintanar is not the National Telecommunications Commission. He alone does not speak for and in behalf of the NTC. The NTC acts through a three-man body, **and the three members of the commission each has one vote to cast in every deliberation concerning a case or any incident therein that is subject to the jurisdiction of the NTC.** When we consider the historical milieu in which the NTC evolved into the quasi-judicial agency it is now under Executive Order No. 146 which organized the NTC as a three-man commission and expose the illegality of all memorandum circulars negating the collegial nature of the NTC under Executive Order No. 146, we are left with only one logical conclusion: the NTC is a collegial body and was a collegial body even during the time when it was acting as a one-man regime.

The foregoing observations made in *GMCR, Inc.* apply to the situation of respondent Justices as members of the Fourth Division. It is of no consequence, then, that no malice or corrupt motive impelled respondent Justices into adopting the flawed procedure. As responsible judicial officers, they ought to have been well aware of the indispensability of collegiality to the valid conduct of their trial proceedings.

We find that the procedure adopted by respondent Justices for their provincial hearings was in blatant disregard of PD 1606, as amended, the *Rules of Court*, and the *Revised Internal*

Rules of the Sandiganbayan. Even worse, their adoption of the procedure arbitrarily denied the benefit of a hearing before a *duly constituted* Division of the Sandiganbayan to all the affected litigants, including the State, thereby rendering the integrity and efficacy of their proceedings open to serious challenge on the ground that a hearing before a *duly constituted* Division of the Sandiganbayan was of the very essence of the constitutionally guaranteed right to due process of law.

Judges are not common individuals whose gross errors men forgive and time forgets.[24] They are expected to have more than just a modicum acquaintance with the statutes and procedural rules.[25] For this reason alone, respondent Justices' adoption of the irregular procedure cannot be dismissed as a mere deficiency in prudence or as a lapse in judgment on their part, but should be treated as simple misconduct, which is to be distinguished from either gross misconduct or gross ignorance of the law. The respondent Justices were not liable for gross misconduct – defined as the transgression of some established or definite rule of action, more particularly, *unlawful behavior* or *gross negligence*,[26] or the *corrupt or persistent violation of the law or disregard of well-known legal rules*[27] – considering that the explanations they have offered herein, which the complainant did not refute, revealed that they strove to maintain their collegiality by holding their separate hearings within sight and hearing distance of one another. Neither were they liable for gross ignorance of the law, which must be based on reliable evidence to show that the act complained of was *ill-motivated, corrupt*, or *inspired by an intention to violate the law*, or *in persistent disregard*

[24] *Requierme Jr. v. Yuipco*, A.M. No. RTJ-98-1427, November 27, 2000, 346 SCRA 25, 34.

[25] *Community Rural Bank of Guimba v. Talavera*, A.M. No. RTJ-05-1909, April 6, 2005, 455 SCRA 34; *Domondon v. Lopez*, 383 SCRA 376, June 20, 2002; *De Vera v. Judge Dames II*, 369 Phil. 470, July 13, 1999.

[26] *Almojuela, Jr. v. Judge Ringor*, Adm. Matter No. MTJ-04-1521, July 27, 2004; *Lim v. Judge Fineza*, Adm. Matter No. RTJ-02-1705, May 5, 2003.

[27] *Ajeno v. Judge Inserto, supra*, note 26.

of well-known legal rules;[28] on the contrary, none of these circumstances was attendant herein, for the respondent Justices have convincingly shown that they had not been ill-motivated or inspired by an intention to violate any law or legal rule in adopting the erroneous procedure, but had been seeking, instead, to thereby expedite their disposition of cases in the provinces.

Nonetheless, it remains that the respondent Justices did not ensure that their proceedings accorded with the provisions of the law and procedure. Their insistence that they adopted the procedure in order to expedite the hearing of provincial cases is not a sufficient reason to entirely exonerate them, even if no malice or corruption motivated their adoption of the procedure. They could have seen that their procedure was flawed, and that the flaw would prevent, not promote, the expeditious disposition of the cases by precluding their valid adjudication due to the nullifying taint of the irregularity. They knew as well that the need to expedite their cases, albeit recommended, was not the chief objective of judicial trials. As the Court has reminded judges in *State Prosecutors v. Muro*,[29] *viz*:

Although a speedy determination of an action or proceeding implies a speedy trial, it should be borne in mind that speed is not the chief objective of a trial. Careful and deliberate consideration for the administration of justice is more important than a race to end the trial. A genuine respect for the rights of all parties, thoughtful consideration before ruling on important questions, and a zealous regard for the just administration of law are some of the qualities of a good trial judge, which are more important than a reputation for hasty disposal of cases.

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What is required on the part of judges is objectivity. An independent judiciary does not mean that judges can resolve specific disputes entirely as they please. There are both implicit and explicit limits on the way judges perform their role. Implicit limits include accepted

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[28] *Ajeno v. Judge Inserto*, Adm. Matter No. 1098-CFI, May 31, 1976, 71 SCRA 166, 171-172; citing *In re Horilleno*, 43 Phil. 212.

[29] A.M. No. RTJ-92-876, December 11, 1995, 251 SCRA 111, 117-118.

legal values and the explicit limits are substantive and procedural rules of law.

The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinate to the "primordial necessity of order in the social life."

Relevantly, we do not consider the respondent Justices' signing of the orders issued during the flawed proceedings as a form of falsification or dishonesty, in that they thereby made it appear that they had all been physically present when the truth was different. Such act merely ensued from the flawed proceedings and cannot be treated as a separate offense.

B.
Unbecoming Conduct of Justice Ong and Justice Hernandez

The Court approves the Court Administrator's finding and recommendation that no evidence supported the complainant's charge that Justice Ong and Justice Hernandez had uttered the improper and intemperate statements attributed to them.

A review of the transcripts of the stenographic notes for the hearings in which the offensive statements were supposedly uttered by them has failed to substantiate the complainant's charge. In the absence of a clear showing to the contrary, the Court must accept such transcripts as the faithful and true record of the proceedings, because they bear the certification of correctness executed by the stenographers who had prepared them.

Even so, Justice Ong and Justice Hernandez admitted randomly asking the counsels appearing before them from which law schools they had graduated, and their engaging during the hearings in casual conversation about their respective law schools. They thereby publicized their professional qualifications and manifested

a lack of the requisite humility demanded of public magistrates. Their doing so reflected a vice of self-conceit. We view their acts as bespeaking their lack of judicial temperament and decorum, which a judge worthy of the judicial robes should avoid especially during their performance of judicial functions. They should not exchange banter or engage in playful teasing of each other during trial proceedings (no matter how good-natured or even if meant to ease tension, as they want us to believe). Judicial decorum demands that they behave with dignity and act with courtesy towards all who appear before their court.

Indeed, Section 6, Canon 6 of the *New Code of Judicial Conduct for the Philippine Judiciary* clearly enjoins that:

> Section 6. **Judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity.** Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.

We point out that publicizing professional qualifications or boasting of having studied in and graduated from certain law schools, no matter how prestigious, might have even revealed, on the part of Justice Ong and Justice Hernandez, their bias *for* or *against* some lawyers. Their conduct was impermissible, consequently, for Section 3, Canon 4 of the *New Code of Judicial Conduct for the Philippine Judiciary*, demands that judges avoid situations that may reasonably give rise to the suspicion or appearance of favoritism or partiality in their personal relations with individual members of the legal profession who practice regularly in their courts.

Judges should be dignified in demeanor, and refined in speech. In performing their judicial duties, they should not manifest bias or prejudice by word or conduct towards any person or group on irrelevant grounds.[30] It is very essential that they should live up to the high standards their noble position on the Bench

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[30] Section 2, Canon 5, *New Code of Judicial Conduct for the Philippine Judiciary*.

demands. Their language must be guarded and measured, lest the best of intentions be misconstrued. In this regard, Section 3, Canon 5 of the *New Code of Judicial Conduct for the Philippine Judiciary*, mandates judges to carry out judicial duties with appropriate consideration for *all* persons, such as the parties, witnesses, lawyers, court staff, and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

In view of the foregoing, Justice Ong and Justice Hernandez were guilty of unbecoming conduct, which is defined as *improper* performance. Unbecoming conduct "applies to a broader range of transgressions of rules not only of social behavior but of ethical practice or logical procedure or prescribed method."[31]

C.
Respondent Justices Not Guilty of Manifest Partiality

The charge of manifest partiality for issuing the resolution granting the demurrer to evidence of the accused in Criminal Case No. 25801 is dismissed. As already mentioned, this Court upheld the assailed resolution on June 5, 2006 in G. R. No. 171116 by declaring the petition of the Office of the Special Prosecutor assailing such dismissal to have "failed to sufficiently show that the Sandiganbayan had committed any reversible error in the questioned judgment to warrant the exercise by this Court of its discretionary appellate jurisdiction."

At any rate, it is worth stressing that a judge will be held administratively liable for rendering an unjust judgment only if he acts with bad faith, malice, revenge, or some other similar motive.[32]

D.
Penalties

Section 9, Rule 140 of the *Rules of Court*, as amended by A.M. No. 01-8-10 SC, classifies the offense of simple misconduct as a less serious charge, *viz*:

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[31] *Zacarias v. National Police Commission,* G.R. No. 119847, October 24, 2003, 414 SCRA 387, 392.

[32] *Almendra v. Asis*, A.M. RTJ-00-1550, April 6, 2000, 330 SCRA 69, 77.

Section 9. *Less Serious Charges.* – Less serious charges include:

xxx xxx xxx

7. Simple Misconduct.

Section 11, Rule 140 of the *Rules of Court* alternatively prescribes the sanctions on judges and justices guilty of a less serious charge, as follows:

Section 11. *Sanctions*. – xxx

xxx xxx xxx

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱ 20,000.00.

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On the other hand, unbecoming conduct is a light charge under Section 10, Rule 140 of the *Rules of Court*, thus:

Section 10. *Light Charges*. – Light charges include:

1. Vulgar and unbecoming conduct;

xxx xxx xxx

and is punishable under Section 11(C), Rule 140 of the *Rules of Court* by a fine of not less than ₱1,000.00, but not exceeding ₱10,000.00; and/or censure, reprimand, or admonition with warning.

Analogizing from Section 55 of the *Uniform Rules on Administrative Cases in the Civil Service*, in an instance where the respondent is guilty of two or more charges, the penalty is that corresponding to the most serious charge, and the rest of the charges are considered as aggravating circumstances.

That respondent Justices' responsibilities as members of a Division were different compels us to differentiate their individual liabilities.

1.
Justice Ong

Without doubt, the Chairman, as head of the Division under the internal rules of the Sandiganbayan, is *primus inter pares*.[33] He possesses and wields powers of supervision, direction, and control over the conduct of the proceedings coming before the Division.

In exercising his powers as Chairman of the Fourth Division, Justice Ong exuded an unexpectedly dismissive attitude towards the valid objections of the complainant, and steered his Division into the path of procedural irregularity. He thereby wittingly failed to guarantee that his Division's proceedings came within the bounds of substantive and procedural rules. We cannot, of course, presume that he was unaware of or unfamiliar with the pertinent law and correct procedure, considering his already long tenure and experience as of then as a Justice of the Sandiganbayan, having risen from Associate Justice to Chairman of his Division.

We hold that the condign and commensurate penalty to impose on Justice Ong is a fine of ₱15,000.00, after taking into consideration the mitigating circumstance that this administrative offense was his first and the aggravating circumstance of the light charge of unbecoming conduct. The penalty goes with a stern warning that a repetition of the same or similar of such offenses shall be dealt with more severely.

2.
Justice Hernandez and Justice Ponferrada

As mere members of the Fourth Division, Justice Hernandez and Justice Ponferrada had no direction and control of *how* the proceedings of the Division were conducted. Direction and control was vested in Justice Ong, as the Chairman. Justice Hernandez and Justice Ponferrada simply relied without malice on the soundness and wisdom of Justice Ong's discretion as their Chairman, which reliance without malice lulled them into traveling the path of reluctance to halt Justice Ong from his irregular

[33] Literally, *first among equals*.

leadership. We hold that their liabilities ought to be much diminished by their lack of malice.

In addition, the fact that this is the first case for Justice Hernandez and Justice Ponferrada is a mitigating circumstance in their favor.

Although Justice Hernandez is liable for the less serious charge of simple misconduct, aggravated by a light charge but appreciating his reliance without malice and the mitigating circumstance of this offense being his first, the Court admonishes him with a warning that a repetition of the same or similar offenses shall be dealt with more severely.

The liability of Justice Ponferrada for the less serious charge of simple misconduct, without any aggravating circumstance, is obliterated by his reliance without malice and the mitigating circumstance of its being a first offense. However, he is warned to be more cautious about the proper procedure to be taken in proceedings before his court.

Final Note

It becomes timely to reiterate that an honorable, competent and independent Judiciary exists to administer justice in order to promote the stability of government and the well-being of the people.[34] We warn, therefore, that no conduct, act, or omission on the part of anyone involved in the administration of justice that violates the norm of public accountability and diminishes the faith of the people in the Judiciary shall be countenanced.[35] Public confidence in the judicial system and in the moral authority and integrity of the Judiciary is of utmost importance in a modern democratic society; hence, it is essential for all judges, individually and collectively, to respect and honor the judicial office as a public trust and to strive to enhance and maintain confidence in the judicial system.[36]

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[34] Preamble, *Code of Judicial Conduct*.

[35] *Alejandro v. Martin*, A.M. No. P-07-2349, August 10, 2007, 529 SCRA 698, 704.

[36] 3rd "Whereas" Clause, *New Code of Judicial Conduct for the Philippine Judiciary*.

WHEREFORE, the Court *RESOLVES* as follows:

1. *ASSOCIATE JUSTICE GREGORY S. ONG* is ordered to pay a fine of ₱15,000.00, with a stern warning that a repetition of the same or similar offenses shall be dealt with more severely;

2. *ASSOCIATE JUSTICE JOSE R. HERNANDEZ* is admonished with a warning that a repetition of the same or similar offenses shall be dealt with more severely; and

3. *ASSOCIATE JUSTICE RODOLFO A. PONFERRADA* is warned to be more cautious about the proper procedure to be taken in proceedings before his court.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Brion, Villarama, Jr., and *Sereno, JJ.,* concur.

Nachura and Abad, JJ., see dissenting opinion.

Del Castillo and Mendoza, JJ., concur in the dissenting opinion of Justice Nachura.

Leonardo-de Castro and *Peralta, JJ.,* no part.

Perez, J., no part, acted on the matter as Court Administrator.

DISSENTING OPINION

NACHURA, *J.*:

I am constrained to register my dissent to the *ponencia* which adjudges respondents: (1) Justices Gregory S. Ong, Jose R. Hernandez, and Rodolfo A. Ponferrada of the Sandiganbayan (4th Division) administratively liable for Simple Misconduct under Section 9, penalized under Section 11, of Rule 140 of the Rules of Court; and (2) Justices Ong and Hernandez for conduct unbecoming, a light charge under Section 10 of the same rule. Specifically, all three (3) respondents were found guilty of violation

of the provisions of Presidential Decree (P.D.) No. 1606 and the Revised Internal Rules of the Sandiganbayan; and respondent Justices Ong and Hernandez were found guilty of violation of: (i) Section 6, Canon 6; (ii) Section 3, Canon 4; and (iii) Section 3, Canon 5 of the New Code of Judicial Conduct for the Philippine Judiciary.

Respondents were actually charged by complainant Rohermia J. Jamsani-Rodriguez, Assistant Special Prosecutor III in the Office of the Special Prosecutor, Office of the Ombudsman, with (1) grave misconduct, conduct unbecoming a Justice, and conduct grossly prejudicial to the interest of the service; (2) falsification of public documents; (3) improprieties in the hearing of cases; and (4) manifest partiality and gross ignorance of the law.

The first charge of grave misconduct is based principally on the procedure adopted by respondent Justices (who compose the 4th Division at the time material to the complaint) in the conduct of provincial hearings for the trial of several cases in the Hall of Justice in Davao City from April 24 to April 28, 2006. The conduct of provincial hearings was undertaken pursuant to Section 1, Rule IV of the Revised Internal Rules of the Sandiganbayan which provides that cases originating from Luzon, Visayas, and Mindanao shall be heard in the region of origin, except only when the greater convenience of the parties and of the witnesses or other compelling considerations require the contrary.

Complainant questions the procedure adopted by respondents in Davao City of hearing two cases simultaneously, with the Chairman (Justice Ong) hearing one case by himself and the two (2) Members (Justices Hernandez and Ponferrada) sitting together to hear another case. She narrates that, per instruction of Special Prosecutor Dennis M. Villa-Ignacio, she objected to the arrangement, but her objections were brushed aside. In sum, complainant avers that, by not sitting together and, thus, not acting as a collegial body, respondents contravened P.D. No. 1606 and, in fact, falsified the orders issued during the hearings. She

alleges that the orders attest that all members of the division had all been present and heard the scheduled cases.

On the other hand, the *ponencia* summarizes the Comment of respondent Justices Ong and Hernandez on the issue of violation of P.D. No. 1606 and the peculiar arrangement that their Division adopted in the conduct of provincial hearings:

> Although admitting having tried cases in the provinces by apportioning or assigning the cases scheduled for hearing among themselves, they emphasized that they had nonetheless ensured at the outset that: first, there was a quorum, *i.e.*, all the three members of the Division were present in the same courtroom or venue, thereby preserving the collegial nature of the Division as required by law, specifically Section 3 of PD 1606; *second*, the members of the Division were within hearing or communicating distance of one another, such that they could readily confer with each other in order to address or resolve any issue that arose in the cases separately being heard by them; and, *third*, the parties did not object to the arrangement, and thus could not later on assail the proceedings to which they had given their full assent, based on the equitable principle of estoppel.
>
> Justice Ong and Justice Hernandez averred that their arrangement had been adopted in the best interest of the service, because they had thereby expedited the disposition of their cases, resulting in considerable savings in time, effort, and financial resources of the litigants, lawyers, witnesses, and the court itself; but that they had meanwhile discontinued the arrangement after it had piled up so much work at a much faster pace than the Fourth Division could cope with. They argued that even assuming, *arguendo*, that the arrangement had been irregular, it could only be the subject of a petition for *certiorari* on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, not an administrative complaint, due to its amounting only to a procedural lapse.

In finding the respondents guilty of simple misconduct, the *ponencia* asseverates:

> Judges are not common individuals whose gross errors men forgive and time forgets. They are expected to have more than just a modicum acquaintance with the statutes and procedural rules. For this reason alone, respondent Justices' adoption of the irregular procedure cannot

be dismissed as a mere deficiency in prudence or as a lapse in judgment on their part, but should be treated as simple misconduct, which is to be distinguished from either gross misconduct or gross ignorance of the law. The respondent Justices were not liable for gross misconduct — defined as the transgression of some established or definite rule of action, more particularly, *unlawful behaviour or gross negligence*, or the *corrupt or persistent violation of the law or disregard of well-known legal rules* — considering that the explanations they have offered herein, which the complainant did not refute, revealed that they strove to maintain their collegiality by holding their separate hearings within sight and hearing distance of one another. Neither were they liable for gross ignorance of the law, which must be based on reliable evidence to show that the act complained of was *ill-motivated*, *corrupt*, or *inspired by an intention to violate the law*, or *in persistent disregard of well-know (sic) legal rules*. On the contrary, none of these circumstances was attendant herein, for the respondent Justices have convincingly shown that; instead, they had not been ill-motivated in adopting the erroneous procedure, for all they had sought to accomplish thereby was to expedite their disposition of cases in the provinces.

Nonetheless, it remains that the respondent Justices did not ensure that their proceedings accorded with the provisions of the law and procedure. Their insistence that they adopted the procedure in order to expedite the hearing of provincial cases is not a sufficient reason to entirely exonerate them, even if no malice or corruption motivated their adoption of the procedure. They could have seen that their procedure was flawed, and that the flaw would prevent, not expedite, the expeditious disposition of the cases by precluding their valid adjudication due to the nullifying taint of the irregularity. They knew as well that the need to expedite their cases, albeit recommended, was not the chief objective of judicial trials.

I find myself unable to agree.

Misconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause.[1] It generally means wrongful, improper, or unlawful conduct motivated by a premeditated, obstinate, or intentional purpose.

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[1] *Dadizon v. Judge Asis*, 464 Phil. 571, 579 (2004).

Respondent Justices' adoption of a different procedure in the conduct of provincial hearings of cases assigned to their Division does not constitute simple misconduct. Although it diverged from the regular procedure where cases are heard by all members of the Division, the arrangement was undertaken without malice or bad faith, nor to favour a party. It was pursued in the best interest of the service. The parties themselves did not raise any objection. In fact, complainant herself, in her memorandum to Special Prosecutor Villa-Ignacio, states:

> In conducting provincial hearing, the Fourth Division has adopted a different procedure. They do not sit as [a] collegial body, instead they divide the division into two. In such a manner, the Chairman will hear some of the cases alone and the other members will hear other cases, conducting hearing separately and simultaneously.
>
> We find this procedure to be advantageous to the Prosecution and also commendable on the part of the Justices. While there are no objections [raised] by the defense lawyers, we are apprehensive of the consequences, considering that this constitutes procedural lapses.

Further, and quite importantly, a becoming respect ought to be accorded to then Court Administrator (now a member of this Court) Jose P. Perez's findings that:

> Viewed in the foregoing light, the charge of grave misconduct cannot stand. It is understood that grave misconduct is such which affects a public officer's performance of his duties as such officer and not only that which affects his character as a private individual and requires reliable evidence showing that the judicial act complained of were corrupt or inspired by an intention to violate the law. Our perusal of the record shows that respondents' adoption of the assailed practice was not motivated by corruption and/or an illegal purpose. Indeed, the best interest of the service was clearly aimed at. To justify the taking of drastic disciplinary action, the law requires that the error or mistake if there be such must be gross or patent, malicious, deliberate or in bad faith.

Additionally, I agree with Justices Ong and Hernandez that the filing of a petition for *certiorari* is the proper remedy to

correct the same upon a showing of grave abuse of discretion amounting to lack or excess or jurisdiction.

In all, misconduct, simple or gross, cannot be imputed to respondent Justices as they were of the honest belief that the procedure undertaken was designed to facilitate and serve the best interest of the service. Even the *ponencia* concedes that respondent Justices "had not been ill-motivated in adopting the erroneous procedure, for all they had sought to accomplish thereby was to expedite their disposition of cases in the provinces."

There was no blatant disregard of P.D. No. 1606, as amended, the Rules of Court, and the Revised Internal Rules of the Sandiganbayan because as explained by respondent Justices they ensured the existence of a quorum since all three members of the Division were present in the same courtroom or venue; the collegial nature of the Division as required by law was maintained; and the members of the Division were within hearing or communicating distance of one another which allowed them to readily confer with each other and resolve any issue that arose in the cases being heard by them. Significantly, the parties in the cases did not object to the arrangement, and were therefore deemed estopped from subsequently assailing the proceedings to which they had given their full assent.

As regards the charge of unbecoming conduct of Justices Ong and Hernandez, the *ponencia* holds against the two Justices their admission that they had randomly asked appearing counsels before them from which law schools they graduated, and their engaging in casual conversation during the hearings about their respective law schools. For the majority, the foregoing acts equated to Justices Ong's and Hernandez's broadcast of their

professional qualifications and manifested a lack of the requisite humility demanded of public magistrates. Their doing so reflected a vice of self-conceit. We view their acts as bespeaking their lack of judicial temperament and decorum, which no judge worthy of the judicial robes should avoid especially during their performance of judicial functions. They should not exchange banter or engage in playful teasing of each other during trial proceedings (no matter how good-natured or even if meant to ease tension, as they want us

to believe). Judicial decorum demands that they behave with dignity and act with courtesy towards all who appear before their court.

xxx xxx xxx

We point out that publicizing professional qualifications or boasting of having studied in and graduated from certain law schools, no matter how prestigious, might have even revealed, on the part of Justice Ong and Justice Hernandez, their bias *for* or *against* some lawyers.

Within the foregoing pronouncements lie the rub. Because for respondent Justices Ong and Hernandez, the matter of which law school they graduated from was simply a jocose matter. In this scenario, justices, and judges for that matter, cannot control the perception of the hearer (complainant, in this instance). We cannot ascribe arrogance to an innocuous question such as which law school counsel attended if no further comments derogatory to the schools or counsels are uttered. The question is not *per se* conceited. The imputation of arrogance and conceit is made by the hearer or observer. Respondent Justices Ong and Hernandez only admitted to posing their queries in jest, and were intended to break the monotony and seriousness of the courtroom setting. It would take a quantum leap to impute arrogance and judicial impropriety to such a statement and translate it into conduct unbecoming a magistrate.

It is for the foregoing reasons that I register my dissent. I, therefore, vote to *DISMISS* the complaint.

DISSENTING OPINION

ABAD, *J.:*

I dissent from the majority decision ably written for the Court by Justice Lucas P. Bersamin.

In 2008 Assistant Special Prosecutor Rohermia Jamsani-Rodriguez from the Office of the Ombudsman charged Justices Gregory S. Ong, Jose R. Hernandez, and Rodolfo A. Ponferrada of the Sandiganbayan's Fourth Division of (1) grave misconduct,

conduct unbecoming a Justice, and conduct grossly prejudicial to the interest of the service; (2) falsification of public documents; (3) improprieties in the hearing of cases; and (4) manifest partiality and gross ignorance of the law.

Regarding the first and second charges, complainant Rodriguez assailed the procedure that respondent Justices adopted during the Fourth Division's hearings in Davao City from April 24 to April 28, 2006. Rodriquez alleged that, rather than sit as a collegial body, Justice Ong, as Chairman, heard cases by himself, while Justices Hernandez and Ponferrada together heard at a short distance the other cases, thus resulting in separate and simultaneous hearings. Rodriguez said that she objected to the procedure but this was brushed aside.

Following an investigation, then Court Administrator Jose P. Perez, submitted a report dated October 6, 2009, recommending the dismissal of the charges for lack of merit. But the majority in the Court found respondent Justices guilty of simple misconduct and respondent Justices Ong and Hernandez guilty of unbecoming conduct. The Court dismissed all the other charges.

I disagree with the findings of guilt.

One. The majority in the Court found respondent Justices guilty of simple misconduct for failure to hear the cases before them as a collegial body. It ruled that P.D. 1606 and the Revised Internal Rules of the Sandiganbayan required the actual presence of the three Justices composing the Division to constitute a quorum for conducting business and holding trial. Thus, the exclusion or absence of any member of the Division negated the existence of a quorum and precluded collegiality.

But, while the procedure that respondent Justices adopted did not strictly follow the requirement to the letter, I submit that their acts cannot be characterized either as simple or grave misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.[1] The misconduct is grave

[1] *Office of the Ombudsman v. Miedes, Sr.*, G.R. No. 176409, February 27, 2008, 547 SCRA 148, 156.

if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules. Otherwise, the misconduct is only simple.[2]

To be considered misconduct, the transgression must have been committed by unlawful behavior or gross negligence. Here, respondent Justices conducted the separate and simultaneous hearings in the same venue and within hearing and communicating distance of each other. They adopted this arrangement to maximize their presence in Davao City and render speedy justice to the parties that wait months before the Court could visit Mindanao again.

The actions of the Justices also resulted in saving the litigants, the lawyers, the witnesses, and the Court considerable time, effort, and resources.[3] None of the Justices was motivated by corruption or an illegal purpose; on the contrary, they did everything in good faith. In fact, complainant Rodriguez herself recognized in her memorandum to her superior that it was commendable on the part of the Justices to have adopted the procedure which turned out to be advantageous to the prosecution.[4]

Clearly, there is nothing unlawful or grossly negligent in what respondent Justices did. At most, it could only be regarded as irregular, which is not sufficient to make them liable for any misconduct.

Two. In weighing respondent Justices' individual liabilities, the majority in the Court made a distinction between the Chairman and the members of the Fourth Division. It explained that as Chairman, Justice Ong possessed and wielded powers of supervision, direction, and control over the Division's proceedings and eventually steered it into the path of procedural irregularity. On the other hand, the majority mitigated the liabilities of Justices

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[2] *Rubio v. Munar, Jr.*, G.R. No. 155952, October 4, 2007, 534 SCRA 597, 602.

[3] Decision, p. 9.

[4] *Id.* at 3.

Hernandez and Ponferrada supposedly because they were mere Division members who had no direction and control of how the proceedings went.

I submit that the distinction is unwarranted and placed respondent Ong at an unfair disadvantage.

As the majority decision noted, the Sandiganbayan being a collegial court, each member has approximately equal power and authority. The members act on the basis of consensus or majority rule.[5] Thus, while the Chairman supervises and directs the proceedings of the Division, his authority is limited to that extent. All Division members share any decision on what proceedings to adopt in the conduct of its business. They act by consensus or majority rule. In fact, respondent Justices pointed out in their respective comments that they adopted the challenged procedure in the best interest of the service. This admission negates any impression that Chairman Ong imposed his will on Justices Hernandez and Ponferrada or that the latter two merely relied on their Chairman's judgment.

It is not fair to conclude that since Justices Hernandez and Ponferrada were mere members, they had no voice in how their Division conducted its business and proceedings. No less than the Code of Judicial Conduct requires them to be independent from judicial colleagues in respect of decisions which they are obliged to make independently.[6]

I submit that Justice Ong does not deserve the sanction, even if light, that the Court has chosen to impose on him.

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[5] *Id*. at 14.

[6] Section 2, Canon 1, Code of Judicial Conduct.

EN BANC

[G.R. Nos. 162335 & 162605. August 24, 2010]

SEVERINO M. MANOTOK IV, FROILAN M. MANOTOK, FERNANDO M. MANOTOK III, MA. MAMERTA M. MANOTOK, PATRICIA L. TIONGSON, PACITA L. GO, ROBERTO LAPERAL III, MICHAEL MARSHALL V. MANOTOK, MARYANN MANOTOK, FELISA MYLENE V. MANOTOK, IGNACIO V. MANOTOK, JR., MILAGROS V. MANOTOK, SEVERINO MANOTOK III, ROSA R. MANOTOK, MIGUEL A.B. SISON, GEORGE M. BOCANEGRA, MA. CRISTINA E. SISON, PHILIPP L. MANOTOK, JOSE CLEMENTE L. MANOTOK, RAMON SEVERINO L. MANOTOK, THELMA R. MANOTOK, JOSE MARIA MANOTOK, JESUS JUDE MANOTOK, JR. and MA. THERESA L. MANOTOK, represented by their Attorney-in-fact, ROSA R. MANOTOK, *petitioners, vs.* **HEIRS OF HOMER L. BARQUE, represented by TERESITA BARQUE HERNANDEZ,** *respondents.*

SYLLABUS

1. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; SALE OF PUBLIC LANDS; THE APPROVAL BY THE SECRETARY OF AGRICULTURE AND COMMERCE IS INDISPENSABLE FOR THE VALIDITY OF THE SALE OF FRIAR LANDS; EFFECT.— Section 18 of Act No. 1120 provides: SECTION 18. No lease or sale made by Chief of the Bureau of Public Lands under the provisions of this Act shall be valid **until approved by the Secretary of the Interior**. It is clear from the foregoing provision that the sale of friar lands shall be valid only if approved by the Secretary of the Interior (later the Secretary of Agriculture and Commerce). In *Solid State Multi-Products Corporation v. Court of Appeals*, this Court categorically declared that the approval by the Secretary of Agriculture and Commerce is indispensable for the validity of the sale of friar lands. This was reiterated in *Liao v. Court of Appeals*, where *sales certificates* issued

by the Director of Lands in 1913 were held to be void in the absence of approval by the Secretary of Agriculture and Natural Resources. x x x Applying the rule laid down in *Solid State Multi-Products Corporation v. Court of Appeals* and *Liao v. Court of Appeals*, we held in *Alonso v. Cebu Country Club, Inc*., that the absence of approval by the Secretary of Agriculture and Commerce in the sale certificate and assignment of sale certificate made the sale *null and void ab initio*. Necessarily, there can be no valid titles issued on the basis of such sale or assignment. The Manotoks' reliance on the presumption of regularity in the statutorily prescribed transmittal by the Bureau of Lands to the Register of Deeds of their deed of conveyance is untenable.

2. ID.; ID.; ID.; THE CERTIFICATE OF SALE SIGNED BY THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES THAT VEST TITLE AND OWNERSHIP TO THE PURCHASER OF FRIAR LAND; SUSTAINED.— Clearly, it is the execution of the contract to sell and delivery of the certificate of sale that vests title and ownership to the purchaser of friar land. Such certificate of sale must, of course, be signed by the Secretary of Agriculture and Natural Resources, as evident from Sections 11, 12 and the second paragraph of Section 15, in relation to Section 18, of Act No. 1120: SECTION 11. Should any person who is the actual and bona fide settler upon, and occupant of, any portion of said lands at the time the same is conveyed to the Government of the Philippine Islands desire to purchase the land so occupied by him, he shall be entitled to do so at the actual cost thereof to the Government, and shall be granted fifteen years from the date of the purchase in which to pay for the same in equal annual installments, should he so desire paying interest at the rate of four per centum per annum on all deferred payments. **…The terms of purchase shall be agreed upon between the purchaser and the Director of Lands, subject to the approval of the Secretary of Agriculture and Natural Resources.** SECTION 12. ...When the cost thereof shall have been thus ascertained, the Chief of the Bureau of Public Lands shall give the said settler and occupant **a certificate which shall set forth in detail that the Government has agreed to sell to such settler and occupant the amount of land so held by him, at the price so fixed, payable as provided in this Act** ...and that upon the payment of the final installment together

with all accrued interest the Government will convey to such settler and occupant the said land so held by him by proper instrument of conveyance, which shall be issued and become effective in the manner provided in section one hundred and twenty-two of the Land Registration Act…SECTION 15. …The right of possession and **purchase acquired by certificates of sale signed under the provisions hereof** by purchasers of friar lands, pending final payment and the issuance of title, shall be considered as personal property for the purposes of serving as security for mortgages, and shall be considered as such in judicial proceedings relative to such security.

3. ID.; ID.; ID.; POSSESSION OF PATRIMONIAL PROPERTY OF THE GOVERNMENT, WHETHER SPANNING DECADES OR CENTURIES, CANNOT *IPSO FACTO* RIPEN INTO OWNERSHIP; APPLICATION.— The decades-long occupation by the Manotoks of Lot 823, their payment of real property taxes and construction of buildings, are of no moment. It must be noted that the Manotoks miserably failed to prove the existence of the title allegedly issued in the name of Severino Manotok after the latter had paid in full the purchase price. The Manotoks did not offer any explanation as to why the only copy of TCT No. 22813 was torn in half and no record of documents leading to its issuance can be found in the registry of deeds. As to the certification issued by the Register of Deeds of Caloocan, it simply described the copy presented (Exh. 5-A) as "DILAPIDATED" without stating if the original copy of TCT No. 22813 actually existed in their records, nor any information on the year of issuance and name of registered owner. While TCT No. 22813 was mentioned in certain documents such as the deed of donation executed in 1946 by Severino Manotok in favor of his children and the first tax declaration (Exh. 26), these do not stand as secondary evidence of an alleged transfer from OCT No. 614. This hiatus in the evidence of the Manotoks further cast doubts on the veracity of their claim. As we stressed in *Alonso*: Neither may the rewards of prescription be successfully invoked by respondent, as it is an iron-clad *dictum* that prescription can never lie against the Government. Since respondent failed to present the paper trail of the property's conversion to private property, the lengthy possession and occupation of the disputed land by respondent cannot be counted in its favor, as the subject property being a friar land, remained

part of the patrimonial property of the Government. **Possession of patrimonial property of the Government, whether spanning decades or centuries, can not *ipso facto* ripen into ownership**. Moreover, the rule that statutes of limitation do not run against the State, unless therein expressly provided, is founded on the "the great principle of public policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided." With respect to the claim of the Manahans, we concur with the finding of the CA that no copy of the alleged Sale Certificate No. 511can be found in the records of either the DENR-NCR, LMB or National Archives. Although the OSG submitted a certified copy of Assignment of Sale Certificate No. 511 allegedly executed by Valentin Manahan in favor of Hilaria de Guzman, there is no competent evidence to show that the claimant Valentin Manahan or his successors-in-interest actually occupied Lot 823, declared the land for tax purposes, or paid the taxes due thereon.

CARPIO MORALES, *J., concurring and dissenting opinion:*

1. POLITICAL LAW NATIONAL ECONOMY AND PATRIMONY; SALE OR LEASE OF PUBLIC LANDS; SHALL BE VALID UNTIL APPROVED BY THE SECRETARY OF NATURAL RESOURCES; APPROVAL, CONSTRUED.— A deeper consideration of the operative act of compliance with the requirement in Section 18 that "[n]o lease or sale made by Chief of the Bureau of Public Lands under the provisions of this Act shall be valid until **approved** by the Secretary" is in order. The general proposition is that a petitioner's claim of ownership must fail in the absence of positive evidence showing the Department Secretary's approval, which cannot simply be presumed or inferred from certain acts. Jurisprudential review is gainful only insofar as settling that the "approval" by the Department Secretary is indispensable to the validity of the sale. **Case law does *not* categorically state that the required "approval" must be in the form of a *signature* on the Certificate of Sale.** *Alonso v. Cebu Country Club, Inc.* merely declared that the "deed of sale" was "not approved" by the Department Secretary. *Solid State Multi-Products Corp. v. Court of Appeals* simply found that the Department Secretary

"approv[ed] th[e] sale without auction" and returned or referred the "application" to the Director of Lands. In *Liao v. Court of Appeals*, the sale certificates were "approved" by a different Department Secretary. *Dela Torre v. Court of Appeals* mentioned nothing about the signature of the Department Secretary, as the instrument of conveyance was yet to be issued.

2. ID.; ID.; ID.; ID.; DEPARTMENT SECRETARY'S SIGNATURE ON THE CERTIFICATE OF SALE IS NOT ONE OF THE REQUIREMENTS FOR THE ISSUANCE OF THE DEED OF CONVEYANCE; RATIONALE.— I submit that the Department Secretary's signature on the certificate of sale is not one of the "requirements for the issuance of the Deed of Conveyance under Act No. 1120." To require another signature of the Department Secretary on the Certificate of Sale, on top of that deemed placed by Order 16-05 on the Deed of Conveyance, is to impose a *redundant* requirement and *render irrelevant the spirit of said Order*. IN FINE, petitioners having complied with the conditions for the applicability of Order 16-05, their Deed of Conveyance is "deemed signed or otherwise ratified" by said Order. It bears emphasis that Order 16-05 is a positive act on the part of the Department Secretary to remedy the situation where, all other conditions having been established by competent evidence, the signature of the Department Secretary is lacking. The Order aims to rectify a previous governmental inaction on an otherwise legally valid claim, or affirm an earlier approval shown to be apparent and consistent by a credible paper trail. Obviously, the incumbent Department Secretary can no longer probe into the deep recesses of his deceased predecessors, or unearth irretrievably tattered documents at a time when the country and its records had long been torn by war, just to satisfy himself with an explanation in the withholding of the signature. The meat of Order 16-05 contemplates such bone of contention as in the present case.

CARPIO, *J., dissenting opinion:*

1. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; SALE OF PUBLIC LANDS; DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) MEMORANDUM ORDER NO. 16-05; CATEGORICALLY

STATES THAT ALL DEEDS OF CONVEYANCE THAT DO NOT BEAR THE SIGNATURE OF THE SECRETARY ARE DEEMED SIGNED OR OTHERWISE RATIFIED; SUSTAINED.— While the third WHEREAS clause of DENR Memorandum Order No. 16-05 refers to Deeds of Conveyance on record in the "field offices" of the DENR, the dispositive portion categorically states that "***all* Deeds of Conveyance that do not bear the signature of the Secretary are deemed signed or otherwise ratified**" by the Memorandum Order. The word "all" means everything, without exception. DENR Memorandum Order No. 16-05 should apply to **all Deeds of Conveyance**, as declared in its dispositive portion, and should not be limited to those on file in DENR "field offices." Assuming, however, that only records on file in the DENR "field offices" are covered by DENR Memorandum Order No. 16-05, **the DENR has a "field office" in Manila for land titles in the National Capital Region (NCR) region**. **This "field office" in Manila is the DENR's Regional Office for the NCR, which is one of the country's 17 administrative regions. In fact, there is no city or municipality in the Philippines that is not under a "field office" of the DENR**. Executive Order No. 192 provides: Section 20. Field Offices of the Department **The *field offices* of the Department are the Environment and Natural Resources *Regional Offices* in the thirteen (13) [now seventeen (17)] administrative regions of the country, the Environment and Natural Resources Provincial Office in every province and the Community Office in municipalities whenever deemed necessary**. The regional offices of the Bureau of Forest Development, Bureau of Mines and Geo-sciences, and Bureau of Lands in each of the thirteen (13) administrative regions and the research centers of the Forest Research Institute are hereby integrated into the Department-wide Regional Environment and Natural Resources Office of the Department, in accordance with Section 24(e) hereof. A Regional Office shall be headed by a Regional Executive Director (with the rank of Regional Director) and shall be assisted by five (5) Regional Technical Directors (with the rank of Assistant Regional Director) each for Forestry, Land Management, Mines and Geo-sciences, Environmental Management, and Ecosystems Research. The Regional Executive Directors and Regional Technical Directors shall be Career Executive Service Officers.

Clearly, as expressly stated in Section 20 of Executive Order No. 192, all DENR Regional Offices, including the Regional Office in NCR, are "field offices" of the DENR. Quezon City, where the land in question is situated, is under DENR's NCR "field office." **In 1919, when the Government sold the subject friar land to the Manotoks' predecessors-in-interest, the land was part of the province of Rizal, which also has a "field office."** Indisputably, DENR Memorandum Order No. 16-05 applies to all Deeds of Conveyance of friar lands anywhere in the Philippines without exception. Thus, conveyances of land within the NCR, including the conveyance to the Manotoks, are covered by DENR Memorandum Order No. 16-05. The first WHEREAS clause clearly states that **what DENR Memorandum Order No. 16-05 seeks to cure are the "uncertainties in the title of the land disposed by the Government under Act 1120 or the Friar Lands Act due to the lack of signature of the Secretary on the Deeds of Conveyance."** If we apply DENR Memorandum Order No. 16-05 only to Deeds of Conveyance on record in the "field offices" outside of NCR, the purpose of the issuance of DENR Memorandum Order No. 16-05 will not be fully accomplished.

2. ID.; ID.; ID.; ID.; THE MAJORITY'S LIMITED APPLICATION THEREOF IS VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION; RATIONALE.— The majority opinion's limited application of DENR Memorandum Order No. 16-05 is violative of the equal protection clause of the Constitution which requires, for valid classification, the following: (1) It must be based upon substantial distinctions; (2) It must be germane to the purposes of the law; (3) It must not be limited to existing conditions only; and (4) It must apply equally to all members of the class. The groupings must be characterized by substantial distinctions that make for real differences so that one class may be treated and regulated differently from another. To limit the application of DENR Memorandum Order No. 16-05 to Deeds of Conveyance in the "field offices" **outside of NCR** would be discriminatory as there is no substantial distinction between the files on record in the DENR "field offices" outside of NCR and the files on record in the DENR "field office" in NCR.

3. ID.; ID.; ID.; ID.; DOES NOT DISPENSE WITH THE SECRETARY'S SIGNATURE BUT RATHER CURES THE ABSENCE OF SUCH SIGNATURE.— There is no conflict between Memorandum Order No. 16-05 and Section 18 of Act No. 1120. Memorandum Order No. 16-05 recognizes the formality of the signature of the Secretary of Interior/ Agriculture on Deeds on Conveyances. Memorandum Order No. 16-05 complies with Section 18 of Act No. 1120 by ratifying the Deeds of Conveyances that were not signed, for one reason or another, by the Secretary. Memorandum Order No. 16-05 only supplies a formality because as the majority expressly admit, the signature of the Secretary is merely a ministerial act upon full payment of the purchase price. Memorandum Order No. 16-05 does not dispense with the Secretary's signature but rather cures the absence of such signature by stating that "all Deeds of Conveyance that do not bear the signature of the Secretary are **deemed signed**." It is as if the DENR Secretary signed each and every Deed of Conveyance that lacked the signature of the Secretary, provided of course that the purchase price had been fully paid. To repeat, Memorandum Order No. 16-05 applies to Deed of Conveyance No. 29204 because the land was already fully paid and the Deed of Conveyance was signed by the Director of Lands but only lacked the signature of the Secretary of Interior/Agriculture.

4. ID.; ID.; ID.; RECOGNIZED RESOLUTORY CONDITION IS NON-PAYMENT OF THE FULL PURCHASE PRICE; EQUITABLE AND BENEFICIAL TITLE SHALL PASS TO THE PURCHASER FROM THE TIME THE FIRST INSTALLMENT IS PAID AND THE CERTIFICATE OF SALE IS ISSUED; APPLICATION IN CASE AT BAR.— The Manotoks became owners of the land upon their full payment of the purchase price to the Government on 7 December 1932. Upon such full payment, the Manotoks had the right to demand conveyance of the land and issuance of the corresponding title to them. This is the law and jurisprudence on friar lands. Thus, the Court has held that in cases of sale of friar lands, the only recognized resolutory condition is non-payment of the full purchase price. Pursuant to Section 12 of Act No. 1120, **"upon payment of the last installment together with all accrued interest[,] the Government will convey to [the] settler and occupant the said land so held by him by proper instrument**

of conveyance, which shall be issued and become effective in the manner provided in section one hundred and twenty-two of the Land Registration Act." Once it is shown that the full purchase price had been paid, the issuance of the proper certificate of conveyance necessarily follows. There is nothing more that is required to be done as the title already passes to the purchaser. The Court has ruled that equitable and beneficial title to the friar land passes to the purchaser from the time the first installment is paid and a certificate of sale is issued. When the purchaser finally pays the final installment on the purchase price and is given a deed of conveyance and a certificate of title, the title, at least in equity, ***retroacts*** to the time he first occupied the land, paid the first installment and was issued the corresponding certificate of sale. The sequence then is that a certificate of sale is issued upon payment of the first installment. Upon payment of the final installment, the deed of conveyance is issued. **It is the Deed of Conveyance that must bear the signature of the Secretary of Interior/ Agriculture because it is only when the final installment is paid that the Secretary can approve the sale, the purchase price having been fully paid**. This is why DENR Memorandum Order No. 16-05 refers only to the Deed of Conveyance, and not to the Sale Certificate, as the document that is "deemed signed" by the Secretary. **In short, Section 18 of Act No. 1120 which states that "(n)o xxx sale xxx shall be valid until approved by the Secretary of Interior" refers to the approval by the Secretary of the Deed of Conveyance. x x x** The majority categorically admit that upon full payment of the purchase price, the buyer *ipso facto* becomes the absolute owner of the friar land, and it becomes the ***ministerial duty*** of the Secretary, who cannot otherwise refuse, to sign the Deed of Conveyance. As absolute owners of the land who have fully paid the purchase price to the Government, and whose ownership retroacted to 10 March 1919, the Manotoks have the right to compel the Secretary, and the Secretary has the ministerial duty, to sign Deed of Conveyance No. 29204. In fact, the Manotoks have been paying the real estate taxes on the land since at least 1933. The Office of the Provincial Assessor declared the title in Severino Manotok's name for tax purposes on 9 August 1933 and assessed Severino Manotok "beginning with the year 1933. Indisputably, upon full payment of the purchase price, full and absolute ownership passes to the

purchaser of friar land. In the case of the Manotoks' title, the Deed of Conveyance was issued except that it lacked the signature of the Secretary which the majority erroneously hold is still indispensable pursuant to *Alonso*. However, *Alonso* should not be applied to the Manotoks' title because DENR Memorandum Order No. 16-05 was not yet issued when the Court decided *Alonso*. The absence of the Secretary's signature in the Deed of Conveyance in *Alonso* was never cured and hence the Court in *Alonso* voided the Deed of Conveyance. Besides, in *Alonso* the corresponding torrens title was never issued even after a lapse of 66 years from the date of the Deed of Conveyance. In sharp contrast, here the lack of the Secretary's signature in the Manotoks' Deed of Conveyance No. 29204 was cured by the issuance of DENR Memorandum Order No. 16-05, which expressly states that **"all Deeds of Conveyance that do not bear the signature of the Secretary are deemed signed or ratified x x x."** Moreover, the Manotoks have been issued their torrens title way back in 1933.

5. ID.; ID.; ID.; REPUBLIC ACT NO. 9443 (AN ACT CONFIRMING AND DECLARING, SUBJECT TO CERTAIN EXCEPTIONS, THE VALIDITY OF EXISTING CERTIFICATES OF TITLE AND RECONSTITUTED CERTIFICATES OF TITLE COVERING BANILAD FRIAR LANDS ESTATE); THE BENEFITS OF THE LAW SHOULD APPLY TO OTHER LANDS SIMILARLY SITUATED.— The majority declare that "[t]he enactment of RA 9443 signifies the legislature's recognition of the statutory basis of the *Alonso* ruling to the effect that in the absence of signature and/or approval of the Secretary of Interior/Natural Resources in the Certificates of Sale on file with the CENRO, the sale is not valid and the purchaser has not acquired ownership of the friar land. Indeed, Congress found it imperative to pass a new law in order to exempt the already titled portions of the Banilad Friar Lands Estate from the operation of Sec. 18." While RA 9443 refers only to the Banilad Friar Lands Estate, to limit its application solely to the Banilad Friar Lands Estate will result in class legislation. RA 9443 should be extended to lands similarly situated. In *Central Bank Employees Assoc., Inc. v. Bangko Sentral ng Pilipinas*, the Court ruled that the grant of a privilege to rank-and-file employees of seven government financial institutions and its denial to BSP rank-and-file

employees breached the latter's equal protection. In that case, the Court stated that "*[a]likes are being treated as unalikes without any rational basis.*" That is the situation in the present case if RA 9443 shall apply only to the Banilad Friar Lands Estate. There is no substantial distinction between the sale of friar lands in Banilad and the sale of friar lands in other places except for their location. The Court further stated in *Central Bank Employees Assoc., Inc.*: [I]t must be emphasized that the equal protection clause does not demand absolute equality *but it requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced.* Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances which, if not identical, are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion; whatever restrictions cast on some in the group is equally binding on the rest. As such, if the lack of signatures and approval of the Secretary of Interior/Agriculture and the Director of Lands were cured with the passage of RA 9443, the benefits of the law should apply to other lands similarly situated.

SERENO*, J., dissenting opinion:*

1. POLITICAL LAW; JUDICIARY; PHILIPPINE SUPREME COURT; FUNCTION.— The function of courts, especially that of the Philippine Supreme Court within the State apparatus, is to issue judicial edicts that consistently uphold legitimate expectations to promote stability and not chaos. Thus a decision that introduces instability without an overweening legal reason that has emanated from the people themselves or from the legislature should instinctively be avoided by the Supreme Court.

2. ID.; DECLARATION OF PRINCIPLES; PROTECTION OF PROPERTY; EFFECT OF FAILURE OF THE LEGAL SYSTEM TO PROMOTE THE STABILITY OF PROPERTY RIGHTS, EXPLAINED.— In Article II, Section 5 of the Constitution, the protection of property is deemed essential for the enjoyment by all the people of the blessings of democracy. The just and dynamic social order described in Section 9 of the same Article envisions a market system where

transactions validly entered upon are upheld by courts. Article II, Section 1 in effect guarantees that the possession of all the requisites for title-holding by persons not be disturbed save by superior legal bases. Should the legal system fail to promote the stability of property rights, there will be an increase in the uncertainty surrounding economic outcomes. If stability cannot be ensured and there is a lack of credible commitment on the part of the ruling body to safeguard the rights of the right-bearers (*i.e.* the holders of rights to property), the value of property is undermined by risk and there is far less incentive for investment. The choices economic entities make will be severely limited, being hampered by these disincentives, and as a result, economic growth will drop. Unpredictability and uncertainty with regard to future values, as well as the inefficiencies of outcomes brought about by an uneven application of distributive arrangements of property rights, will assail the very foundations of our economic system.

APPEARANCES OF COUNSEL

Felix B. Lerio, Justice Florentino P. Feliciano, Roberto San Juan and Leslie C. Dy and *Sycip Salazar Hernandez & Gatmaitan* for petitioners.

Romeo C. De La Cruz & Associates for intervenors Manahan.

Maria Cynthia Antonia V. Sardillo Pimentel.

D E C I S I O N

VILLARAMA, JR., *J.*:

In our Resolution[1] promulgated on December 18, 2008, we set aside the Decision[2] dated December 12, 2005 rendered by the First Division; recalled the Entry of Judgment recorded on May 2, 2006; reversed and set aside the Amended Decisions

[1] *Manotok IV v. Heirs of Homer L. Barque*, G.R. Nos. 162335 & 162605, 574 SCRA 468.

[2] Penned by Associate Justice Consuelo Ynares-Santiago and concurred in by Chief Justice Hilario G. Davide, Jr. and Associate Justices Leonardo A. Quisumbing and Adolfo S. Azcuna. Associate Justice Antonio T. Carpio dissented.

dated November 7, 2003 and March 12, 2004 in CA-G.R. SP Nos. 66700 and 66642, respectively; and remanded to the Court of Appeals (CA) for further proceedings these cases which shall be raffled immediately.

The CA was specifically directed to receive evidence with primary focus on whether the Manotoks can trace their claim of title to a valid alienation by the Government of Lot No. 823 of the Piedad Estate, which was a Friar Land. On that evidence, this Court may ultimately decide whether annulment of the Manotok title is warranted, similar to the annulment of the Cebu Country Club title in *Alonso v. Cebu Country Club, Inc.*[3] The Barques and Manahans were likewise allowed to present evidence on their respective claims "which may have an impact on the correct determination of the status of the Manotok title." On the other hand, the Office of the Solicitor General (OSG) was directed to secure all the relevant records from the Land Management Bureau (LMB) and the Department of Environment and Natural Resources (DENR). If the final evidence on record "definitively reveals the proper claimant to the subject property, the Court would take such fact into consideration as it adjudicates final relief."[4]

After concluding the proceedings in which all the parties participated and presented testimonial and documentary evidence, as well as memoranda setting forth their respective arguments, the CA's Special Former First Division rendered a Commissioners' Report[5] consisting of 219 pages on April 12, 2010. Upon receipt of the sealed Report submitted to this Court, the parties were no longer furnished copies thereof in order not to delay the promulgation of the Court's action and the adjudication of these cases, and pursuant to our power under Section 6, Rule 135 of the Rules of Court to adopt any suitable process or mode of proceeding which appears conformable to the spirit of the Rules

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[3] G.R. No. 130876, January 31, 2002, 375 SCRA 390.

[4] *Supra* note 1, at 508-509.

[5] Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Sesinando E. Villon and Normandie B. Pizarro.

"to carry into effect all auxiliary processes and other means necessary to carry our jurisdiction into effect."[6]

The evidence adduced by the parties before the CA, which are exhaustively discussed in the Commissioners' Report, including the judicial affidavits and testimonies presented during the hearings conducted by the CA's Special Former Special Former First Division, are herein summarized. But first, a brief restatement of the antecedents set forth in our Resolution.

Antecedents

Lot No. 823 is a part of the Piedad Estate, Quezon City, a Friar Land acquired by the Philippine Government from the Philippine Sugar Estates Development Company, Ltd., La Sociedad Agricola de Ultramar, the British-Manila Estate Company, Ltd., and the Recoleto Order of the Philippine Islands on December 23, 1903, as indicated in Act No. 1120 (Friar Lands Act) enacted on April 26, 1904. The Piedad Estate has been titled in the name of the Government under Original Certificate of Title (OCT) No. 614 and was placed under the administration of the Director of Lands.[7]

Controversy arising from conflicting claims over Lot 823 began to surface after a fire gutted portions of the Quezon City Hall on June 11, 1988 which destroyed records stored in the Office of the Register of Deeds of Quezon City. That fire has attained notoriety due to the numerous certificates of title on file with that office, which were destroyed as a consequence. The resulting effects of that blaze on specific property registration controversies have been dealt with by the Court in a number of cases since then. The present petitions are perhaps the most heated, if not the most contentious of those cases thus far.[8]

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[6] See *Manotok Realty, Inc. v. CLT Realty Development Corporation*, G.R. Nos. 123346 & 134385, March 31, 2009, 582 SCRA 583, 590.

[7] See *Liao v. Court of Appeals*, G.R. Nos. 102961-62, 107625 and 108759, January 27, 2000, 323 SCRA 430, 442.

[8] *Manotok IV v. Heirs of Homer L.Barque, supra* note 1, at 484.

Sometime in 1990, a petition for administrative reconstitution[9] of Transfer Certificate of Title (TCT) No. 372302 in the name of the Manotoks covering Lot No. 823 with an area of 342,945 square meters was filed by the Manotoks with the Land Registration Authority (LRA) which granted the same, resulting in the issuance of TCT No. RT-22481 (372302) in 1991. In 1996, eight (8) years after the fire which razed the Quezon City Hall building, the Barques filed a petition with the LRA for administrative reconstitution of the original of TCT No. 210177 in the name of Homer Barque and covering Lot 823 of the Piedad Estate, Quezon City, alleged to be among those titles destroyed in the fire. In support of their petition, the Barques submitted copies of the alleged owner's duplicate of TCT No. 210177, real estate tax receipts, tax declarations and a Plan Fls 3168-D covering the property.[10]

Learning of the Barques' petition, the Manotoks filed their opposition thereto, alleging that TCT No. 210177 was spurious. Although both titles of the Manotoks and the Barques refer to land belonging to Lot No. 823 of the Piedad Estate situated in the then Municipality of Caloocan, Province of Rizal, TCT No. 210177 actually involves two (2) parcels with an aggregate area of 342,945 square meters, while TCT No. RT-22481 (372302) pertains only to a single parcel of land, with a similar area of 342,945 square meters.[11]

On June 30, 1997, Atty. Benjamin M. Bustos, the reconstituting officer, denied Barques' petition declaring that Lot No. 823 is already registered in the name of the Manotoks and covered by TCT No. 372302 which was reconstituted under Adm. Reconstitution No. Q-213 dated February 1, 1991, and that the submitted plan Fls 3168-D is a spurious document as categorically declared by Engr. Privadi J.G. Dalire, Chief, Geodetic Surveys

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[9] Exhibits 1 and 31 – Manotok, CA *rollo*, Vol. VII, pp. 3060-3061, 3316-3321.

[10] *Manotok IV v. Heirs of Homer L. Barque, supra* note 1, at 485.

[11] *Id.*

Division of the LMB. The Barques' motion for reconsideration having been denied, they appealed to the LRA. [12]

The LRA reversed the ruling of Atty. Bustos and declared that the Manotok title was fraudulently reconstituted. It ordered that reconstitution of TCT No. 210177 in the name of Homer L. Barque shall be given due course after cancellation of TCT No. RT-22481 (372302) in the name of the Manotoks upon order of a competent court of jurisdiction. The LRA denied the Manotoks' motion for reconsideration and the Barques' prayer for immediate reconstitution. Both the Manotoks and the Barques appealed the LRA decision to the CA.[13]

In the petition for review filed by the Barques (CA-G.R. SP No. 66700), Felicitas Manahan filed a motion to intervene and sought the dismissal of the cases in CA-G.R. SP No. 66700 and CA-G.R. SP No. 66642 as she claimed ownership of the subject property.[14]

By Decision of September 13, 2002, the CA's Second Division denied the petition in CA-G.R. SP No. 66700 and affirmed the LRA Resolution. Subsequently, in an Amended Decision[15] dated November 7, 2003, the Special Division of Five of the Former Second Division reconsidered its Decision dated September 13, 2002 and directed the Register of Deeds of Quezon City to cancel TCT No. RT-22481 (372302) in the name of the Manotoks and to reconstitute the Barques' "valid, genuine and existing" TCT No. 210177. The Manotoks filed a motion for reconsideration but this was denied.[16]

As to Manotoks' petition (CA-G.R. SP No. 66642), the CA's Third Division rendered a Decision[17] on October 29, 2003 which

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[12] *Id.* at 485-486.

[13] *Id.* at 487-488.

[14] *Id.* at 488.

[15] Penned by Associate Justice Buenaventura J. Guerrero and concurred in by Associate Justices Eloy R. Bello, Jr., Edgardo P. Cruz and Danilo B. Pine. Associate Justice Juan Q. Enriquez, Jr. dissented.

[16] *Manotok IV v. Heirs of Homer L. Barque*, *supra* note 1, at 488-489.

[17] Penned by Associate Justice Eubulo G. Verzola and concurred in by Associate Justices Remedios Salazar-Fernando and Edgardo F. Sundiam.

affirmed the resolution of the LRA. The Barques filed a motion for reconsideration. As what happened in CA-G.R. SP No. 66700, the CA's Third Division granted the Barques' motion for reconsideration and on February 24, 2004, promulgated its Amended Decision wherein it reconsidered the decision dated October 29, 2003, and ordered the Register of Deeds of Quezon City to cancel TCT No. RT-22481 (372302) in the name of the Manotoks and the LRA to reconstitute the Barques' TCT No. 210177.[18]

Aggrieved by the outcome of the two (2) cases in the CA, the Manotoks filed the present separate petitions (G.R. Nos. 162605 and 162335) which were ordered consolidated on August 2, 2004. On December 12, 2005, this Court's First Division rendered its Decision affirming the two (2) decisions of the CA. The Manotoks filed a motion for reconsideration, which the Court's First Division denied in a Resolution dated April 19, 2006. Thereafter, the Manotoks filed a Motion for Leave to File a Second Motion for Reconsideration, with their Motion for Reconsideration attached. The Court denied the same in a Resolution dated June 19, 2006 and eventually entry of judgment was made in the Book of Entries of Judgment on May 2, 2006. In the meantime, the Barques filed multiple motions with the First Division for execution of the judgment, while the Manotoks filed an Urgent Motion to Refer Motion for Possession to the Supreme Court *En Banc* (with prayer to set motion for oral arguments). In a Resolution dated July 19, 2006, the Special First Division referred these cases to the Court *en banc*, and on July 26, 2006, the Court *en banc* promulgated a Resolution accepting the cases.[19]

On September 7, 2006, Felicitas Manahan and Rosendo Manahan filed a motion to intervene, to which was attached their petition in intervention. They alleged that their predecessor-in-interest, Valentin Manahan, was issued Sale Certificate No. 511 covering Lot No. 823 of the Piedad Estate and attached to their

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[18] *Manotok IV v. Heirs of Homer L. Barque, supra* note 1, at 489.

[19] *Id.* at 490.

petition the findings of the National Bureau of Investigation (NBI) that the documents of the Manotoks were not as old as they were purported to be. Consequently, the Director of the Legal Division of the LMB recommended to the Director of the LMB that "steps be taken in the proper court for the cancellation of TCT No. RT-22481 (372302) and all its derivative titles so that the land covered may be reverted to the State." In compliance with the directive of this Court, the OSG filed its Comment and oral arguments were held on July 24, 2007. Thereafter, the Court required the parties, the intervenors and the Solicitor General to submit their respective memoranda.

As already mentioned, the December 12, 2005 Decision of the Court's First Division was set aside, entry of judgment recalled and the CA's Amended Decisions in CA-G.R. SP Nos. 66642 and 66700 were reversed and set aside, pursuant to our Resolution promulgated on December 18, 2008 wherein we ordered the remand of the cases to the CA for further proceedings.

Evidence Submitted to the CA

A. ***OSG***

Engr. Judith Poblete, Records Custodian of DENR-NCR, brought the original copy of the Lot Description of Lot No. 823 of the Piedad Estate, a certified copy of which was marked as Exhibit 28-OSG [DENR]. She also identified Land Use Map (1978), Exhibit 32-OSG [DENR], showing the location of Lot No. 823 of Piedad Estate at Matandang Balara, Quezon City.[20]

Engr. Evelyn G. Celzo, Geodetic Engineer III of the Technical Services Section of DENR-NCR, identified her signature in Technical Descriptions (Lot No. 823, Piedad Estate) marked as Exhibit 29-OSG [DENR],[21] which is on file at the Technical Services Section. She explained that there is no discrepancy because the lot description "64.45" appearing in Exhibit 28-

[20] TSN, July 27, 2009, pp. 8, 11-21 (CA *rollo*, Vol. V, pp. 1909, 1912-1922); CA *rollo*, Vol. VI, pp. 2686, 2695-2697.

[21] CA *rollo*, Vol. IV, p. 1462.

OSG should read "644.5" (as reflected in Exhibit 29-OSG [DENR]) and they used this computation as otherwise the polygon will not close. Sketch/Special Plans (Exhibits 30 and 31-OSG [DENR]) were prepared for Felicitas Manahan after she had purchased Lot No. 823 of Piedad Estate. As land investigator, she made a thorough research of the property and she was able to see only the sale certificate of the Manahans (Exhibit 2-OSG [LMB]) but not those of the Manotoks and the Barques. She admitted that she does not have the record of the field notes of the survey conducted in 1907.[22]

Atty. Fe T. Tuanda, Officer-in-Charge (OIC) of the Records Management Division (RMD), LMB, testified that she was designated OIC on January 13, 2009. She identified the following documents on file at their office, certified copies of previously certified copies which were marked as OSG exhibits: (a) Survey Card for BL Survey No. Fls-3164 in the name of Valentin Manahan (Exh. 1-OSG [LMB]); (b) Assignment of Sale Certificate No. 511 dated June 24, 1939 in the name of Valentin Manahan, assignor, and Hilaria de Guzman, assignee (Exh. 2-OSG [LMB]); (c) Deed of Absolute Sale dated August 23, 1974 executed by Hilaria de Guzman in favor of Felicitas Manahan covering Lot 823, Fls-3164, Piedad Estate (Exh. 3-OSG [LMB]); (d) Technical Description of Lot No. 823, Piedad Estate dated May 27, 1983 (Exh. 4-OSG [LMB]); (e) Investigation Report on Lot No. 823, Piedad Estate dated July 5, 1989 prepared by Evelyn C. dela Rosa, Land Investigator, North CENRO (Exh. 5-OSG [LMB]); (f) Petition for cancellation/reversion of TCT No. RT-22481 (372302) in the name of Severino Manotok, *et al*. dated November 25, 1998 filed by Felicitas Manahan before the OSG (Exh. 6-OSG [LMB]); (g) Letter dated December 3, 1998 of Assistant Solicitor General Cecilio O. Estoesta referring the petition filed by Felicitas Manahan to the LMB for investigation and/or appropriate action (Exh. 7-OSG [LMB]); (h) LMB Special Order No. 98-135 dated

[22] TSN, July 27, 2009, pp. 29-37, 44-60, 73-85, 98-108 (CA *rollo*, Vol. V, pp. 1930-1938, 1945-1961, 1974-1986, 1999-2009); CA *rollo*, Vol. VI, pp. 2686-2688, 2689-2694.

December 18, 1998 designating investigators for the petition filed by Felicitas Manahan (Exh. 8-OSG [LMB]); (i) 1st Indorsement dated February 23, 1999 and 2nd Indorsement dated March 26, 1999 issued by DENR Lands Sector Regional Technical Director Mamerto L. Infante forwarding documents pertaining to Lot No. 823, Fls-3164, Piedad Estate, Quezon City to the Director of LMB (Exhs. 9 and 10-OSG [LMB]); (j) Chemistry Report No. C-99-152 dated June 10, 1999 issued by the NBI Forensic Chemistry Division (Exh. 11-OSG [LMB]); (k) Office Memorandum dated October 2000 from LMB Land Administration and Utilization Division Chief Arthus T. Tenazas forwarding records of Lot No. 823, Piedad Estate to the LMB-RMD for numbering and notarization of the Deed of Conveyance (Exh. 12-OSG [LMB]); (l) Memorandum dated April 17, 2000 issued by the Chief of the Legal Division of the LMB to the OIC- Director of the LMB regarding the petition filed by Felicitas Manahan (Exh. 13-OSG [LMB]); (m) Memorandum dated July 6, 2000 issued by the DENR Undersecretary for Legal Affairs to the Director of the LMB on the issue of whether a Deed of Conveyance may be issued to Felicitas Manahan by virtue of Sale Certificate No. 511 covering Lot No. 823 of Piedad Estate (Exh. 14-OSG [LMB]); (n) Order dated October 16, 2000 issued by the LMB transferring Sale Certificate No. 511 in the name of Valentin Manahan and ordering the issuance of Deed of Conveyance in favor of Felicitas Manahan (Exh. 15-OSG [LMB]); (o) Deed No. V-200022 dated October 30, 2000 issued by the LMB and signed by the OIC Director of Lands Management, in favor of Felicitas Manahan covering Lot No. 823 of Piedad Estate (Exh. 16-OSG [LMB]); (p) Letter dated November 24, 2004 from LRA Deputy Administrator Ofelia E. Abueg-Sta. Maria addressed to then DENR Secretary Michael T. Defensor referring to the latter Deed No. V-200022 for verification as to its authenticity (Exh. 17-OSG [LMB]); (q) Letter dated January 3, 2005 of DENR Secretary Defensor addressed to LRA Deputy Administrator Abueg-Sta. Maria acknowledging receipt of the latter's letter dated November 24, 2004 (Exh. 18-OSG [LMB]); (r) Memorandum dated January 3, 2005 from DENR Secretary Defensor to the Director of LMB requiring the latter to take immediate appropriate action on the

letter dated November 24, 2004 of LRA Deputy Administrator Abueg-Sta. Maria (Exh. 19-OSG [LMB]); (s) Office Memorandum dated January 19, 2005 from LMB OIC Assistant Director Alberto R. Ricalde to the LMB-RMD referring to the latter the Memorandum dated January 3, 2005 issued by DENR Secretary Defensor (Exh. 20-OSG [LMB]); (t) Memorandum dated January 20, 2005 from LMB-RMD OIC Leonido V. Bordeos to LMB OIC Assistant Director Ricalde stating the results of their records verification conducted pursuant to Office Memorandum dated January 19, 2005 (Exh. 21-OSG [LMB]); (u) Letter dated January 21, 2005 from LMB Director Concordio D. Zuñiga addressed to LRA Deputy Administrator Abueg-Sta. Maria indicating the results of their records verification on Deed No. V-200022 (Exh. 22-OSG [LMB]); (v) Inventory of Claims/ Conflicts Cases involving the Piedad Estate (Exh. 23-OSG [LMB]); (w) Memorandum dated November 23, 2007 from LMB Land Administration and Utilization Division, Friar Lands Unit Chief Ariel F. Reyes to LMB Legal Division OIC Manuel B. Tacorda providing a history of OCT No. 614, Piedad Estate, as well as its metes and bounds (Exh. 24-OSG [LMB]); (x) Memorandum dated November 9, 2007 from DENR Undersecretary for Administration, Finance and Legal Atty. Mary Ann Lucille L. Sering addressed to the Regional Executive Director and Regional Technical Director for Lands of the DENR-NCR, the Director and Handling Officer of the LMB, the Executive Director of Land Administration and Management Project, calling for a conference regarding the launching of a project called "Operation 614" (Exh. 25-OSG [LMB]); (y) Memorandum dated November 26, 2007 from Legal Division OIC Tacorda to the LMB Director regarding the conference for the launching of "Operation 614" (Exh. 26-OSG [LMB]); and (z) Memorandum dated November 28, 2007 from LMB OIC Director Gerino A. Tolentino, Jr. to the DENR Secretary regarding the launching of "Operation 614" (Exh. 27-OSG [LMB]).[23]

On cross-examination, Atty. Tuanda said that while all documents received by the RMD are stamped received, there

[23] TSN, July 28, 2009, pp. 7-35 (CA *rollo*, Vol. VI, pp. 2830-2858); CA *rollo*, Vol. IV, pp. 1411-1460.

were no such stamp mark on Exhibits 1-OSG, 2-OSG, 3-OSG, 9-OSG, 10-OSG, 13-OSG, 14-OSG, 19-OSG and 25-OSG; Exh. 17-OSG had stamp received by the Office of the Assistant Director of LMB. When asked why the pagination in Exh. 13-OSG is not consecutive, Atty. Tuanda said she was not the one (1) who placed the page numbers on the documents.[24]

Engr. Ludivina L. Aromin, Chief of the Technical Services Section, DENR-NCR, identified the Sketch/Special Plans prepared for the Manahans for reference purposes (Exhs. 30 and 31-OSG [DENR][25]), based on the technical description of Lot No. 823 taken from results of the original survey conducted in 1907. These were signed by Engr. Ignacio R. Almira, Jr., Chief of Surveys Division, and noted by Atty. Crisalde Barcelo, Regional Technical Director of DENR-NCR. She had verified the metes and bounds of Lot No. 823, explaining that if the distance used between points 2 and 3 is "64.45", and not "644.5", the area of Lot No. 823 would not be "342,945 square meters" and the Special Plans would not have been approved by the LMB. She clarified that the sale certificate in the name of Valentin Manahan she was referring to is actually the Assignment of Sale Certificate No. 511 (Exh. 2-OSG).[26]

On November 17, 2009, the OSG submitted the following certified true copies of documents contained in Volume 2 of the records pertaining to Lot No. 823, Piedad Estate, on file with the LMB: (a) Assignment of Sale Certificate No. 1054 dated March 11, 1919 executed by Regina Geronima and Zacarias Modesto, assignors, and Felicisimo Villanueva as assignee (Exh. 33-OSG [LMB]); (b) Assignment of Sale Certificate No. 1054 dated May 4, 1923 executed by M. Teodoro and Severino Manotok as assignors, and Severino Manotok as assignee (Exh. 34-OSG [LMB]); (c) Assignment of Sale Certificate No. 651 dated April 19, 1930 executed by Ambrosio Berones as assignor, and Andres C. Berones as assignee (Exh. 35-OSG [LMB]); and (d) Sale Certificate No. 651 issued by the

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[24] *Id.* at 37-52 (*Id.* at 2860-2875).

[25] CA *rollo,* Vol. IV, pp. 1463-1464.

[26] TSN, July 28, 2009, pp. 76-104 (CA *rollo*, Vol. VI, pp. 2899-2927).

Government of the Philippine Islands in favor of Ambrosio Berones (Exh. 36-OSG [LMB]).[27]

Recalled to the witness stand, Atty. Tuanda testified that the allegation of the Manotoks in their Tender of Excluded Evidence With Proffer of Proof that she suppressed the release of LMB records to Luisa Padora is misleading, as she was merely complying with DENR Administrative Order No. 97-24 dated July 30, 1997 on the release and disclosure of information. As ordered by the court on July 28, 2009, she allowed the Manotoks to photocopy all the records pertaining to Lot No. 823. She asserted that Volume 2 of the records of Lot No. 823 is not missing, as in fact she produced it in court. Volume 2 contained the following documents: (a) Assignment of Sale Certificate No. 651 dated April 19, 1930 covering Lot 823 of the Piedad Estate executed by Ambrosio Berones as assignor, in favor of Andres C. Berones as assignee; (b) Assignment of Sale Certificate No. 1054 dated March 11, 1919 executed by Regina Geronimo and Zacarias Modesto; (c) Assignment of Sale Certificate No. 1054 dated May 4, 1923 executed by Teodoro and Severino Manotok covering Lot No. 823; and the NBI Chemistry Report (Exh. 11-OSG [LMB]).[28]

On cross-examination, Atty. Tuanda said that she assumed office only on January 16, 2009. Volume 2 contains only four (4) thin documents and she personally supervised its pagination; she cannot answer for the pagination of Volumes 1, 3 and 4. She cannot recall if there are other papers in the RMD involving Lot No. 823, there is no indication when the documents in Volume 2 were received for filing but their index cards will show those dates. The documents in Volume 2 were borrowed by the NBI and were inadvertently inserted in Volume 1 when it was returned by the NBI. She cannot remember if there was a Deed of Conveyance either in favor of the Manotoks or the Barques. They have in their records not the Sale Certificate

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[27] CA *rollo*, Vol. VIII, pp. 4265-4274.

[28] TSN, November 10, 2009, pp. 38-51 (CA *rollo*, Vol. X, pp. 5500-5513).

No. 511 dated June 24, 1939 but only the Assignment of Sale Certificate No. 511.[29]

Nemesio Antaran, Assistant Chief of the RMD, and concurrently Chief of the General Public Land Records Section, LMB, brought to the court original copy of Assignment of Sale Certificate No. 511 dated June 24, 1939 in the name of Valentin Manahan, assignor, and Hilaria de Guzman, assignee (Exh. 2-OSG [LMB]).[30] On cross-examination, he said that such document was included in the Indorsement dated February 23, 1999 signed by Mamerto L. Infante, Regional Technical Director, Lands Sector, DENR-NCR. He cannot ascertain when Exh. 2-OSG was filed or received by the DENR. He saw in the record sale certificate in the name of the Manotoks but did not see sale Certificate No. V-321 and Deed of Conveyance No. 4562 in the name of the Barques. Exhibits I to VI, X to XXII are faithful reproduction of the originals on file with the RMD, but he is not sure whether their Exhibits VII, XXVI to XXXIV are on file with the RMD.[31] On re-direct examination, he said that the Indorsement dated February 23, 1999 (Exh. 9-OSG [LMB]) was addressed to the Director, LMB and not to the OSG. He further explained that the DENR-NCR has documents pertaining to Lot 823 of the Piedad Estate because the application to purchase friar land begins with or emanates from the NCR office. After the requirements are completed, these applications are forwarded to the Office of the Director, LMB for processing.[32]

The OSG formally offered Exhibits 1-OSG [LMB] to 27-OSG [LMB], and 28-OSG [DENR] to 32-OSG-DENR.

B. ***Manotoks***

Jose Marie P. Bernabe, a geodetic engineer who had worked in both public and private sectors and was hired as consultant

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[29] *Id.*, pp. 52-62, 64-73, 85-91, 100-104, 116-121 (5514-5524, 5526-5535, 5547-5553, 5562-5566, 5578-5583).

[30] TSN, July 29, 2009, pp. 15-22 (CA *rollo*, Vol. XI, pp. 7402-7409).

[31] *Id.* at 30-31, 44-48, 64-70 (*Id.* at 7417-7418, 7431-7435, 7451-7457).

[32] *Id.* at 76-79 (*Id.* at 7463-7466).

in cases involving disputed lots, examined the survey plans and titles covering Lot No. 823 of the Piedad Estate. Using coordinate geometry and/or computer aided design, he plotted the technical descriptions of Lot No. 823 based on the technical descriptions appearing in OCT No. 614, Manotoks' TCT No. RT-22481 and Barques' TCT No. 210177. He found that although both titles indicate that Lot No. 823 was originally registered under OCT No. 614, they contain significantly different technical descriptions of the same property. The Manotoks' title indicates an unsubdivided Lot No. 823 with the following boundaries: on the East by Payatas Estate, on the Southeast by the Tuazon Estate, and on the West by Lots 824-A, 818-A and 818-C. On the other hand, the Barques' title describes Lot 823 as subdivided into Lots 823-A and 823-B bounded on the Northeast and Southeast by the property of Diez Francisco, on the Southwest by Lot 824, and on the Northwest by Lot 826. However, the southeast and northeast boundaries of Lot No. 823 as indicated in the Barques' title are not mentioned in OCT No. 614. Using Google Earth, Lot 826 is actually located far north of Lot 823 based on the Lot Description Sheet (Exh. 43[33]) certified correct and reconstructed on December 17, 1979 by the Director of Lands. Lot 818 is the correct lot to the west of Lot 823 together with Lot 824, as shown in the various approved survey plans in the area (such as Psd-16296, Psd-16489, Psd-6737, Psd-22842 and Psd-291211), but as shown in the Barques' title, Lots 824 and 826 are cited as adjacent lots to the west of Lot 823. He found some unusual irregularities in the Barques' Subdivision Plan Fls-3168-D dated June 21, 1940 (Exh. 45[34]), prepared for Emiliano Setosta. When he compared Subdivision Plan Fls-3004-D dated February 16, 1941, the lot he surveyed covering Lot 290-B which is a portion of Lot 290 of the Piedad Estate covered by TCT No. RT-120665, he noticed that Fls-3168-D dated June 21, 1940 is more than six (6) months ahead of the date of survey on February 16, 1941 for Fls-3004-D. It is highly irregular that a survey executed at a later date would have a lower plan number since the plan numbers are issued consecutively by the Bureau

[33] CA *rollo,* Vol. VII, p. 3428.

[34] *Id.* at 3430-3431.

of Lands. He likewise found that the errors and discrepancies pertaining to Fls-3168-D show that the regular procedures and requirements for preparing subdivision plans were not followed.[35]

Engr. Bernabe pointed out that his examination of Survey Plan for Lot 824-A done in 1947 (Exh. 46[36]) showed that to the east of Lot 824-A is *undivided* Lot 823 (Exh. 46-A[37]); the Survey Plan for Lot 822-A (Exh. 47[38]), which is located north of Lot 823, prepared in 1991 and approved in 1992, shows that Lot 823 is an *undivided* piece of property (Exh. 47-A[39]); and Survey Plan for Lot 818-A-New (Exh. 48[40]) shows Lots 818-New-A, 818-New-B and 818-C the western boundaries of Lot 823, which is consistent with the description in Manotoks' title. Thus, based on the totality of the documents he examined, Lot 823 of the Piedad Estate is an undivided piece of land with an area of 342,945 square meters, bounded on the East by Payatas Estate, on the Southeast by the Tuazon Estate and on the West by Lots 824-A, 818-A and 818-C, consistent with the technical descriptions appearing in the nine (9) certificates of title of the Manotoks. Based on his research, and as shown in the Report signed by Engr. Privadi Dalire, Chief of Geodetic Surveys Division, LMB (Exh. 49[41]) and the latter's Affidavit dated November 18, 2006 (Exh. 50[42]), no record of Subdivision Plan Fls-3168-D exists in the LMB and LMS-DENR-NCR, and the machine copy of Fls-3168-D purportedly issued by the LMS-DENR-NCR is spurious and did not emanate from LMB.[43]

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[35] CA Commissioners' Report, pp. 18-19 (Judicial Affidavit of Jose Marie P. Bernabe [Exh. 52], CA *rollo,* Vol. V, pp. 1655-1670).

[36] CA *rollo,* Vol. VII, p. 3432.

[37] *Id.* at p. 3433.

[38] *Id.* at 3434.

[39] *Id.* at 3435.

[40] *Id.* at 3436.

[41] *Id.* at 3437-3450.

[42] *Id.* at 3451-3487.

[43] CA Commissioners' Report, pp. 19-20.

Luisa Padora, employed as legal assistant in the various corporations of the Manotoks whose responsibilities include securing, preparing and safekeeping of all documents such as titles, conveyances, tax declarations, tax payment receipts, etc. pertaining to the properties of the Manotoks, identified the documents marked as Exhibits 1 to 13, 26 to 27-EEEEEEE.[44]

Milagros Manotok-Dormido declared that Lot 823 of the Piedad Estate where she also resides was acquired by their grandfather Severino Manotok from the Government. They have since built several houses and structures on the property where they live up to the present. The property was fenced with concrete walls to secure it from outsiders and bar the entry of trespassers. As a result of the lengthy ownership of the Manotoks and their occupancy, Lot 823 became publicly known and referred to as the Manotok Compound. Severino Manotok bought Lot 823 in the 1920s and "obtained a transfer certificate of title under a direct transfer from the Government"; they have declared it for real property tax purposes and religiously paid the taxes since 1933. Tracing the acquisition of ownership by the Manotoks of Lot 823, the witness said she has in her possession copies of the following documents:

1. OCT No. 614 issued on March 12, 1912 in the name of "Gobierno de las Islas Filipinas" covering the Piedad Estate, including Lot 823 (Exh. 9);

2. Sale Certificate No. 1054 dated March 10, 1919 issued by the Bureau of Lands to Regina Geronimo, Zacarias Modesto and Felicisimo Villanueva covering Lot 823 (Exh. 10);

3. Assignment of Sale Certificate No. 1054 dated March 11, 1919 entered into between Regina Geronimo, Zacarias Modesto and Felicisimo Villanueva as assignors, and Zacarias Modesto as assignee, covering Lot 823 (Exh. 11);

4. Assignment of Sale Certificate No. 1054 dated June 7, 1920 entered into between Zacarias Modesto as assignor, and M. Teodoro and Severino Manotok as assignees, covering Lot 823 (Exh. 12);

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[44] *Id.* at 20-21 (Judicial Affidavit of Luisa Padora [Exh. 53], CA *rollo*, Vol. V, pp. 1650-1654); CA *rollo*, Vol. VII, pp. 3060-3148, 3192-3279.

5. Assignment of Sale Certificate No. 1054 dated May 4, 1923 entered into between M. Teodoro and Severino Manotok as assignors, and Severino Manotok as assignee, covering Lot 823 (Exh. 13);

6. Relocation Plan No. FLR67-D for Lot 823 as surveyed for Severino Manotok on April 18, 1928 by Deputy Public Land Surveyor A. Manahan and approved by the Bureau of Lands on August 27, 1928 (Exh. 20);

7. Description of Relocation Plan for Lot 823 prepared by Deputy Public Land Surveyor A. Manahan for Severino Manotok with accompanying receipt (Exhs. 21 and 21-A);

8. TCT No. 22813 of the Registry of Deeds for the Province of Rizal indicating Lot 823, its area and boundaries, the lower half of this document is torn (Exh. 8);

9. Deed of Donation dated August 23, 1946 executed by Severino Manotok in favor of his children (Purificacion, Elisa, Rosa, Perpetua, Filomena, Severino, Jr., Jesus and Rahula Ignacio) and grandsons Severino III and Fausto, Jr., covering Lot 823 (Exh. 7-A);

10. Page of the Notarial Register of Notary Public Angel del Rosario for the year 1946 issued by the National Archives reflecting the Deed of Donation executed by Severino Manotok (Exh. 7-B);

11. TCT No. 534 of the Registry of Deeds for the Province of Rizal issued on September 4, 1946 in the name of the Manotok children and grandchildren (Exh. 7);

12. Deed of Assignment dated August 25, 1950 executed by the Manotok children and grandchildren in favor of Manotok Realty, Inc. (Exh. 6-A);

13. TCT No. 13900 of the Registry of Deeds for Quezon City issued on August 31, 1950 in the name of Manotok Realty, Inc. (Exh. 6);

14. Unilateral Deed of Conveyance dated January 31, 1974 executed by Manotok Realty, Inc. in favor of the Manotok children and grandchildren, covering Lot 823 (Exh. 5-A);

15. TCT No. 198833 of the Registry of Deeds for Quezon City issued on May 27, 1974 in the name of the Manotoks (Exh. 5);

16. Deeds of Absolute Sale separately executed on May 8, 1976 by Purificacion Laperal Rosa R. Manotok, Perpetua M. Bocanegra, Severino Manotok, Jr. and Jesus R. Manotok (Exhs. 4-A to 4-E);

17. TCT No. 221559 of the Registry of Deeds for Quezon City issued on August 9, 1976 in the name of the Manotoks (Exh. 4);

18. Deed of Sale executed by Perpetua M. Bocanegra in 1984 covering the remaining 1/2 of her 1/9 undivided interest in Lot 823 in favor of her son George M. Bocanegra;

19. TCT No. 330376 issued in the name of the Manotok children and grandchildren in 1984 as a result of the Deed of Sale executed by Perpetua M. Bocanegra, covering Lot 823;

20. Unilateral Deed of Absolute Sale dated December 22, 1986 executed by Ignacio R. Manotok covering his 1/9 undivided interest in Lot No. 823 in favor of his children Michael Marshall, Mary Ann, Felisa Mylene, Ignacio, Jr. and Milagros (Exh. 3-A);

21. TCT No. 354241 issued in the name of the Manotok children and grandchildren as a result of the Unilateral Deed of Absolute Sale dated December 22, 1986 executed by Ignacio R. Manotok, covering Lot No. 823;

22. Deed of Absolute Sale dated October 8, 1987 executed by Fausto Manotok covering his 1/18 undivided interest in Lot No. 823 in favor of his children (Exh. 2-A);

23. TCT No. 372302 of the Registry of Deeds for Quezon City issued on October 17, 1987 in the name of the Manotok children and grandchildren as a result of the October 8, 1987 Deed of Absolute Sale executed by Fausto Manotok (Exh. 2);

24. TCT No. RT-22481 (372302) of the Registry of Deeds for Quezon City issued in the name of the Manotok children and grandchildren in 1991 upon their application for reconstitution of TCT No. 372302 after the same was destroyed by a fire that razed the Quezon City Registry of Deeds office on June 11, 1988 (Exh. 1).

Milagros Manotok-Dormido also identified those documentary exhibits attached to their pre-trial brief, several declarations of Real Property covering Lot No. 823 (Exhs. 26 to 26-N), numerous Real Property Tax Bills and Real Property Tax Receipts from 1933 to the present (Exhs. 27 to 27-EEEEEEE, 27-YYYYYY), photographs of the perimeter walls surrounding Lot No. 823 (Exhs. 35-A to 35-UUU), photographs of the houses and structures built by the Manotoks on the property over the years (Exhs. 35 to 35-YY), some letters from government offices recognizing their grandfather as the owner of the property (Exhs. 15, 16, 17, 18 and 25), and Metro Manila Street Map (2003 ed.) identifying Lot No. 823 as "Manotoc Compound" (Exh. 34). She had secured a copy of *Deed of Conveyance No. 29204 dated December 7, 1932* (Exh. 51-A[45]) from the National Archives of the Philippines.[46]

On cross-examination, the witness declared that she is testifying in lieu of Rosa Manotok; her affidavit is the same as the affidavit of Rosa Manotok, the daughter of Severino Manotok. She asserted that Severino Manotok acquired Lot No. 823 of the Piedad Estate by direct transfer from the Government. After the Bureau of Lands issued the Assignment of Sale Certificate No. 1054 on June 7, 1920, her grandfather Severino Manotok fully paid the installments and was able to obtain a title (TCT No. 22183) after a deed of conveyance was issued on December 7, 1932. Sale Certificate No. 1054 was not annotated on OCT No. 614. Relocation Plan of Lot No. 823 (Exh. 21) indicated its location at Barrio Payong, Municipality of Caloocan, Province of Rizal. The changes of location of the property in the tax declarations and tax receipts from Barrio Payong, then to Barrio Culiat, and later to Barangay Matandang Balara was caused by the City Assessor (the Manotok Compound and Barrio Culiat are two

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[45] CA *rollo*, Vol. VII, pp. 3489-3490.

[46] Judicial Affidavit of Milagros Manotok Dormido, CA *rollo*, Vol. VI, pp. 2560-2579; TSN, October 28, 2009 p.m., pp. 3-14 (CA *rollo*, Vol. IX, pp. 4526-4537); Revised/Amended Pre-Trial Brief with attached documents marked as Exhibits 1 to 51-A, CA *rollo*, Vol. VII, pp. 2986-3490.

[2] distinct locations).[47] As a layman, she considered as sales certificate the Assignment of Sale Certificate No. 1054. They asked for a certified true copy of Deed of Conveyance No. 29204 from the National Archives; she believes that it is an internal document of the Bureau of Lands. Despite a diligent search, they were not able to secure a copy of Deed of Conveyance No. 29204 from the Bureau of Lands, LMB, LRA and the Registry of Deeds offices of Quezon City, Caloocan and Rizal. When confronted with TCT No. 22813 supposedly dated August 1928 while the Deed of Conveyance was issued later in 1932, the witness said that the title must have been issued in 1933. The Manahans never demanded from the Manotoks nor sued the latter for the return of Lot 283, Piedad Estate which they were also claiming.[48]

When asked who is the registered owner under TCT No. 22813, Milagros Manotok Dormido said she cannot answer it because said document they recovered is truncated and cut under. But the Manotoks were the recognized owners under TCT No. 22813 by the Provincial Assessor. As to the notation "cancelled by TCT No. 634" she said that she has not seen that title; it could be a human error somewhere in that document. She also had no knowledge that TCT No. 634 covers a lot in Cavite with an area of about 500 square meters registered in the name of Mamahay Development Corporation.[49]

Susana M. Cuilao, longtime employee of the Manotoks, testified that she assisted Elisa R. Manotok in filling the application for reconstitution of TCT No. 372302 covering Lot No. 823 after it was destroyed in a fire which razed the Quezon City Registry of Deeds on June 11, 1988. She identified the documents they submitted in their application. After several follow-ups, in February 1991, Elisa R. Manotok received a copy of the Order dated February 1, 1991 (Exh. 36) signed by the Reconstituting

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[47] TSN, October 28, 2009 p.m., pp. 25-54; TSN, October 29, 2009, pp. 37-38 (CA *rollo*, Vol. IX, pp. 4548-4577, 4637-4638).

[48] TSN, October 29, 2009 a.m., pp. 40-46, 48-53, 57-69, 72-78 (*Id.* at 4640-4646, 4648-4653, 4657-4669, 4672-4678).

[49] *Id.* at 98-102 (*Id.* at 4698-4702).

Officer Benjamin Bustos granting her application for reconstitution. In December 1993, she received original duplicate copy of TCT No. RT-22481 (372302) from the Quezon City Registry of Deeds.[50]

One (1) of the rebuttal witnesses for the Manotoks, **Luisa Padora**, in her Judicial Affidavit dated December 9, 2009, obtained from the National Archives certifications (signed by an archivist) stating that said office has *no* copy on its file of the following: Sale Certificate No. 511 executed by Valentin Manahan in favor of Hilaria de Guzman (Exh. 28[51]); the Deed of Absolute Sale between Hilaria de Guzman Manahan and Felicitas B. Manahan (Exh. 29[52]) supposedly notarized by Santiago R. Reyes on August 23, 1974 (Exh. 119[53]) as Doc. No. 1515, Page 98, Book No. VI, series of 1974 entered in the notarial register is a Memorandum of Agreement, Promissory Note and Payment Receipt executed by Reynaldo Cornejo on August 23, 1974; and the Deed of Absolute Sale between Emiliano Setosta and Homer K. Barque (Exh. 30[54]) as certified true copies of pages 84 and 85 (Exhs. 120 and 121[55]) of the notarial register of Atty. Eliseo Razon shows that neither Document Nos. 415 nor 416 was the supposed Deed of Sale dated September 24, 1975 between Emiliano Setosta and Homer K. Barque but a Deed of Absolute Sale executed by Magdalena Reyes and a Special Power of Attorney executed by Victorio Savellano, respectively.[56]

Luisa Padora further declared that sometime in 1999, she located two (2) old documents, among others, at the Manotok's warehouse in the compound: a 1929 certified copy of Assignment

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[50] CA Commissioners' Report, p. 27; Judicial Affidavit of Susana M. Culiao (Exh. 54), CA *rollo*, Vol. V, pp. 1635-1641.

[51] CA *rollo*, Vol. VII, p. 3313.

[52] *Id.* at 3314.

[53] CA *rollo*, Vol. IX, p. 5275.

[54] CA *rollo*, Vol. VII, p. 3315.

[55] CA *rollo*, Vol. IX, pp. 5277-5279.

[56] CA Commissioners' Report, pp. 28-29.

of Sale Certificate No. 1054 dated May 4, 1923 (Exh. 13-A[57]) between M. Teodoro and Severino Manotok (assignors) and Severino Manotok (assignee) covering Lot No. 823, which was certified by the Chief Clerk of the Bureau of Lands, and the original Official Receipt dated February 20, 1929 (Exh. 14[58]) issued by the Government of the Philippines Islands for the cost of the certified copy of the Assignment of Sale Certificate No. 1054. With respect to the documents relating to Lot No. 823 which were in the LMB, Luisa Padora stated that she brought the letter-request (Exh. 122[59]) dated July 9, 2009 requesting for copies of all LMB documents pertaining to Lot No. 823. When she went to the Friar Lands Division of the LMB, and went through the folders marked Volumes I, III and IV, she noticed that there was no Volume II, and that out of the 1000 pages of available records of Lot No. 823, only 416 pages were released to her upon orders from the OIC of the RMD, Atty. Tuanda. Atty. Tuanda released all the withheld documents (only 416 pages out of 1000 pages of available records of Lot No. 823) only after she was ordered by the Court to provide the Manotoks with copies of the documents. She noticed there was no Volume II. The LMB released some of the requested documents after her first affidavit was submitted before the court on July 20, 2009.[60]

As to the statement of Atty. Tuanda during the November 10, 2009 hearing that Volume II of the records of Lot No. 823 was not missing and is available, Luisa Padora stated that she received a letter-reply dated October 15, 2007 addressed to the Manotoks (Exh. 117[61]) from Mr. Rainier D. Balbuena, OIC of the RMD, which states that out of all the records pertaining to Lot 823, Piedad Estate, only Volumes I, III and IV were officially returned/ received by the RMD on October 5, 2006 and that Volume II

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[57] CA *rollo,* Vol. VII, p. 3149.

[58] *Id.* at 3150.

[59] CA *rollo,* Vol. IX, p. 5280.

[60] CA Commissioners' Report, p. 29.

[61] CA *rollo,* Vol. IX, p. 5273.

was not returned to the RMD. As additional proof, she presented LMB Office Memorandum (Exh. 118[62]) dated September 19, 2007 which contains a note at the bottom left hand corner which states "Volume II not yet returned as of this writing (charged to Office of the Asst. Director and rec'd by Charie Sale on 12.21.00)."[63]

Dr. Mely F. Sorra, Document Examiner V and presently the Chief of Questioned Documents Division, Philippine National Police (PNP), testified that the LMB submitted for examination on December 1, 2009 three (3) questioned documents: "Q-1" - Assignment of Sale Certificate No. 1054 dated March 11, 1919 executed by Regina Geronimo, Modesto Zacarias and Felicisimo Villanueva; "Q-2" - Assignment of Sale Certificate No. 1054 dated May 4, 1923; and "Q-3" – Assignment of Sale Certificate No. 511 dated June 24, 1939 (transmittal letter marked as Exh. 139 signed by Atty. Fe. T. Tuanda, OIC, RMD). Her laboratory report (Exh. 138[64]) contains the findings of the microscopic, ultraviolet (UV) transmitted light and physical examinations, and photographic procedure she performed on the questioned documents. She also went to the National Archives for comparison of the appearance of documents dated 1919, 1923 and 1932 with "Q-1", "Q-2" and "Q-3". She found the three (3) documents authentic being old and because of their discoloration and tattered condition, but she admitted that she cannot tell the age of said documents, nor the age of the paper used. She merely determined the age through the browning and discoloration, tears or tattered condition of the paper. In this case, she concluded that the documents were old because they are attested/notarized and because of their physical appearance, such as the ink used in the signatures was already fading and had evaporated/oxidized. Because of age, the ink of the signatures appearing on the documents had evaporated and the color is

[62] *Id.* at 5274.

[63] CA Commissioners' Report, pp. 29-30; During the December 15, 2009 hearing, Luisa Padora confirmed the rebuttal judicial affidavit she executed (Exh. 126) and was cross-examined on the documents referred to therein.

[64] CA *rollo,* Vol. IX, pp. 5304-5305.

brownish; the particular ink which evaporates refers to a fountain pen ink. The entries that were in ballpoint pen ink were the written entries on the stamp pad bearing the words "Department of Environment and Natural Resources, Land Management Bureau-RMD Manila." When the documents were subjected under ultraviolet light examination, they gave a dull fluorescence reaction as opposed to a very bright fluorescence reaction of a new coupon bond.[65]

On cross-examination, Dr. Sorra said that at the National Archives she saw the duplicates of the originals of documents "Q-1" and "Q-2" and had examined and photographed them; they appeared newer than those copies submitted by the LMB because of good storage. She did not examine contemporaneous documents in the records of the LMB because she believes that the National Archives is the repository of all the documents in the Philippines and because the three (3) questioned documents came from the LMB, and she presumed that the record-keeping facilities at the LMB are not as good as that of the National Archives based on the difference in the appearance of the documents from these offices. However, she was not able to see how the documents are being stored at the LMB as she was not able to visit said office. Based on her findings, the questioned documents are old; she had seen documents dated 1919 and 1923 on file with the National Archives. Documents "Q-1 and Q-2" were from 1919 based on their copies at the National Archives and her examination thereof. She explained that her conclusion that the document is authentic does not mean that the signatures are also authentic because she had no basis for comparison, and that she would not be able to determine the age of a document when there was an artificial aging.[66]

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[65] TSN, December 16, 2009 a.m., pp. 14-23, 38-44, 61-63, 75-86, 95-100, 105-107 (CA *rollo*, Vol. XIV, pp. 9866-9875, 9890-9896, 9913-9915, 9927-9938, 9947-9952, 9957-9959).

[66] TSN, December 16, 2009 p.m., pp. 15-21, 68-70, 88-91, 95-104 (CA *rollo*, Vol. XIV, pp. 9976-9982, 10029-10031, 10049-10052, 10056-10065); Exhibits 138-A to 138-I, 139, CA *rollo*, Vol. XI, pp. 7224-7242.

Dr. Sorra admitted that she did not conduct a chemical examination of the questioned documents because the PNP Crime Laboratory has no scientific equipment for chemical analysis, and that she did not refer the said documents to the Chemistry Division of the PNP because the carbon dating equipment is with the Department of Science and Technology (DOST); she also did not refer the documents to the DOST. She agreed that the best and more accurate way of determining the age of a paper or a document is through carbon dating, and explained that through microscopic and physical examination she will be able to tell whether the document is old but not its exact age.[67]

In her Rebuttal Judicial Affidavit,[68] **Milagros Manotok-Dormido** declared that the completion of Severino Manotok's installment payments was evidenced by official receipts (Exhs. 112-115[69]) and acknowledged by the Deed of Conveyance No. 29204 (Exh. 51-A) validly certified by the National Archives (Exhs. 84 and 85[70]), which also certified page 97 of the Notarial Register for the year 1932 that on December 20, 1932, Jose P. Dans appeared and acknowledged the due execution of this Deed of Conveyance (Exh. 83[71]). Said Deed of Conveyance is genuine as shown by the certified copies of Deeds of Conveyance issued on the same date and which contain deed numbers immediately preceding and succeeding the Deed of Conveyance No. 29204 (Exhs. 86-98[72]). On January 29, 1946 (August 23, 1946[73]), Severino Manotok executed a Deed of Donation conveying Lot No. 823 covered by TCT No. 22813 to his children and grandchildren. The Manotok's ownership of the property

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[67] TSN, December 16, 2009 p.m., pp. 33-37, 151-154 (CA *rollo*, XIV, pp. 9994-9998, 10112-10115).

[68] Exhibit 140, CA *rollo*, Vol. IX, pp. 5162-5171.

[69] CA *rollo*, Vol. IX, pp. 5260-5263.

[70] *Id.* at 5196-5197.

[71] *Id.* at 5194-5195.

[72] *Id.* at 5198-5229, 5291-5302.

[73] TSN, December 17, 2009 am, pp. 26-27 (CA *rollo*, Vol XIV, pp. 10256-10257).

is further evidenced by tax declarations in the name of Severino Manotok and later his children and grandchildren as co-owners (Exhs. 25 to 27-YYYYYY), tax payment receipts, building permits secured by Elisa Manotok for the construction of buildings and structures on the land (Exhs. 64 to 78[74]), and succeeding transfer certificates of titles.[75]

With respect to the claim of the Barques, the witness presented the following documents: (a) Certification issued on February 10, 2009 by the National Archives stating that it has no copy on file of the Deed of Absolute Sale allegedly executed between Emiliano Setosta and Homer K. Barque ratified on September 24, 1975 before Notary Public Eliseo A. Razon (Exh. 80[76]); (b) Property Identification issued by the Quezon City Assessor's Office showing that Lot No. 823 of the Piedad Estate remains unsubdivided (Exh. 79[77]); (c) Letter dated August 7, 2007 addressed to Engr. Privadi J.G. Dalire (former Chief of Geodetic Surveys Division) from Chief of Geodetic Surveys Division, Engr. Bienvenido F. Cruz, attesting that Fls-3168-D is not recorded in the Inventory Book of Fls Plans (Exh. 99[78]), also shown by a certified copy of page 351 of the Inventory Book of Plans (Exh. 82[79]) ; and (d) Letter dated August 6, 2009 from the Quezon City Assistant Assessor confirming that Property Index No. 21-22020 which was submitted by the Barques marked as Exh. 35, does not pertain to Lot 823 of the Piedad Estate but to a property located at Miller St. cor. Don Vicente St., Filinvest II Subdivision, Bagong Silangan, Quezon City (Exh. 100[80]).[81]

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[74] CA *rollo*, Vol. IX, pp. 5173-5188.

[75] Rebuttal Judicial Affidavit, CA *rollo*, Vol. IX, p. 5163, 5172-5188, 5194-5229.

[76] CA *rollo*, Vol. IX, p. 5190.

[77] *Id.* at 5189.

[78] *Id.* at 5230-5231.

[79] *Id.* at 5193.

[80] *Id.* at 5232.

[81] *Id.* at 5163-5165, 5189-5193, 5230-5235.

As to the claim of Manahans, the witness submitted the following documents: (a) the same Letter from the Quezon City Assistant Assessor, it was confirmed that Tax Declaration No. C-138-06951, submitted by the Manahans as Exh.1, does not pertain to Lot No. 823 of the Piedad Estate but to a property located at Don Wilfredo St., Don Enrique Subdivision, Barangay Holy Spirit, Quezon City (Exh. 100[82]); (b) Certifications from the National Archives that it has no copy on file of Sale Certificate No. 511, Assignment of Sale Certificate No. 511 and Deed of Sale between Hilaria de Guzman-Manahan and Felicitas Manahan (Exhs. 28[83], 104 and 105[84]); (c) Certification dated October 14, 2009 issued by Jose M.B. Cabatu, Chief, Reconstitution Division-LRA, stating that an administrative petition for reconstitution of the purported original of TCT No. 250215 of the Registry of Deeds for Quezon City was filed by a certain Felicitas Manahan and transmitted to the LRA on or about January 7, 1998 but the petition and other documents transmitted therewith could not be located, and that it has no record of any order directing the reconstitution of said title (Exh. 106[85]); (d) Certificates of Death issued by the Parish of Our Lady of Mt. Carmel in Malolos City, Bulacan stating that Valentin Manahan died on September 21, *1931*, thus refuting the claim that Valentin Manahan caused the property survey of Lot No. 823, the preparation and approval of survey plan Fls-3164 and executed the Assignment of Sale Certificate No. 511 in favor of Hilaria de Guzman on June 24, *1939* (Exhs. 102, 61, 62[86]); (e) Negative Certification of Death issued by the Office of the City Civil Registrar of Malolos stating that the records of deaths during the period January 1931 to December 1931 were all destroyed by natural cause and for that reason it cannot issue a true transcription from the Register of Deaths relative to Valentin Manahan who is alleged to have died on September 21, 1931

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[82] *Id.* at 5232.

[83] CA *rollo,* Vol. VII, p. 3313.

[84] CA *rollo,* Vol. IX, pp. 5243-5244.

[85] *Id.* at 5245.

[86] *Id.* at 5154-5157, 5236-5240.

in Malolos City (Exh. 103[87]); (e) Documents obtained from the Parish of Our Lady of Mt. Carmel, the Office of the Civil Registrar of Malolos City and the National Statistics Office (NSO), and also Liber Defunctorum 5-Entry No. 10, showing that Rosendo Manahan died on July 30, 1963 at the age of 20, thus refuting the claim of Rosendo Manahan that he is the son of Lucio Manahan and Hilaria de Guzman-Manahan (Exhs. 107, 108, 109 and 57[88]).[89]

Milagros Manotok-Dormido further declared that the building permits applied for by her aunt refer to the houses appearing in the photographs attached to her Judicial Affidavit. Based on the index cards (Exhs. 64 to 69[90]), the location of the properties described therein is Capitol Golf Club, Capitol; at that time, the location of the property subject of the building permits in Exhs. 67, 68 and 69 is Capitol Golf Club, Capitol. They did not apply to build residences inside a golf club and there is no golf course inside the Manotok Compound.[91] She went to Malolos about four (4) times to confirm the story of the Manahans. At the Parish of Our Lady of Mt. Carmel, the custodian of the records, Teodora Dinio, referred her to a man she knew as "*Mang Atoy*" who showed her the Book of Deads. She borrowed three (3) books and returned them right away after xeroxing. She asked "*Mang Atoy*" where the Catholic cemetery is and he pointed to the back of the church. There she saw (for a brief time) the tombstone of Lucio Manahan; she did not see that of Valentin Manahan. When asked why she did not go to the LMB or other government office instead of the National Archives to secure a certification in the records concerning Sale Certificate No. 511, the witness said it was because that was a notarized document. The certifications she obtained were not signed by the Executive

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[87] *Id.* at 5242.

[88] *Id.* at 5247-5248, 5252-5255.

[89] Rebuttal Judicial Affidavit, CA *rollo,* Vol. IX, pp. 5167-5169; 5144-5157, 5232 -5255.

[90] CA *rollo,* Vol. IX, pp. 5173-5176.

[91] TSN, December 17, 2009 p.m., pp. 5-24 (CA *rollo*, Vol. XIV, pp. 10343-10362).

Director but only by an archivist who was authorized to sign in behalf of Dr. Teresita Ignacio, Chief of the Archives Collection and Access Division. As to the lack of signature of the Secretary of Agriculture and Natural Resources in the certified copy of Deed of Conveyance No. 29204 from the National Archives, she asserted that it is still a complete document being just a copy of the duplicate original, which must have been signed by the Secretary of Agriculture and Natural Resources; she was sure of this, as in fact they were issued TCT No. 22813 dated 1933 (not August 1928 as erroneously reflected in the title because the Deed of Conveyance was issued in 1932 and her grandfather was notified by the Provincial Assessor of Rizal that he can start paying his tax on August 9, 1933).[92]

The Manotoks also presented as witness **Msgr. Angelito Santiago**, Parish Priest of Our Lady of Mt. Carmel in Barasoain, Malolos, Bulacan. Said witness testified that based on their record book, Hilaria de Guzman who was living in Bulihan was the wife of Lucio Manahan who died on August 19, 1955, while in Book 7, Hilaria de Guzman who died on June 19, 1989 was living in San Gabriel and the husband was Jose Cruz; "Hilaria de Guzman" appearing in Book 7 is different from Hilaria de Guzman found in Book 5. He further declared that the Certificate of Death of Valentin Manahan married to Francisca Lucas (Exh. 61[93]) does not cover the death of Valentin Manahan married to Placida Figueroa. He could not explain why Folio Nos. 145, 146, 148, 149 are intact while page or Folio 147 of Book 4 covering the record of deaths in the month of February 1955 is missing.[94]

Other documentary evidence formally offered by the Manotoks are the following: (a) Exh. 7[95] - a photocopy of TCT No. 534

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[92] *Id.* at 55-69, 97-100, 102-114, 150-165 (*Id.* at 10393-10407, 10436-10439, 10442-10454, 10490-10506).

[93] CA *rollo*, Vol. IX, p. 5154.

[94] TSN, December 15, 2009 a.m., pp. 13-19, 2127 (CA *rollo*, Vol. XII, pp. 8512-8518, 8520-8526).

[95] CA *rollo*, Vol. VII, pp. 3125-3126.

covering Lot No. 823, Piedad Estate in the name of the Manotok children, which is offered to prove that said title is a transfer from TCT No. 22813 which was cancelled by TCT No. 534; (b) Exh. 19[96] - certified copy of a Certification dated November 18, 1950 issued by Register of Deeds for Pasig Gregorio Velazquez that the original of TCT No. 534 issued in the name of Purificacion Manotok, *et al*. was forwarded to the Register of Deeds for Quezon City; (c) Exh. 119[97] - certified copy of page 98 of the Notarial Register of Atty. Santiago Reyes which shows that document no. 1515 is a Memorandum of Agreement-Promissory Note & Payment Receipt executed by one (1) Mr. Cornejo on August 23, 1974, and not the alleged Deed of Sale between Hilaria de Guzman and Felicitas Manahan; (d) Exh. 120[98] - certified copy of page 84 of the Notarial Register of Atty. Eliseo Razon for 1975 which shows that doc. no. 415 is not the supposed Deed of Sale dated September 24, 1975 between Homer Barque and Emiliano Setosta, but a Deed of Absolute Sale executed by Magdalena Reyes; (e) Exh. 121[99]- certified copy of page 85 of the Notarial Register of Atty. Eliseo Razon for 1975 which shows that doc. no. 416 is not the supposed Deed of Sale dated September 24, 1975 between Homer Barque and Emiliano Setosta, but a Special Power of Attorney executed by Victorino Savellano.

As part of their rebuttal evidence, the Manotoks also formally offered the following: Exh. 142 - Certified copy issued by the National Archives of Assignment of Sale Certificate No. 1054 dated March 11, 1919 between Zacarias Modesto, Regina Geronimo and Felicisimo Villanueva (assignors) and Zacarias Modesto (assignee), covering Lot 823 of Piedad Estate[100]; Exh. 143 – Certified copy issued by the National Archives of Assignment of Sale Certificate No. 1054 dated June 7, 1920

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[96] *Id.* at 3160.

[97] CA *rollo,* Vol. IX, p. 5307.

[98] *Id.* at 5277.

[99] *Id.* at 5278.

[100] CA *rollo,* Vol. XII, pp. 8588-8589.

between Zacarias Modesto (assignor) and M. Teodoro and Severino Manotok (assignees) covering Lot 823 of Piedad Estate[101]; and Exh. 144 - Certified copy issued by the National Archives of Assignment of Sale Certificate No. 1054 dated May 4, 1923 between M. Teodoro and Severino Manotok (assignors) and Severino Manotok (assignee), covering Lot 823 of Piedad Estate.[102]

C. ***Barques***

Teresita Barque-Hernandez identified and affirmed the contents of her Judicial Affidavit declaring that she caused the filing of an application for administrative reconstitution of TCT No. 210177 before the LRA because the original copy thereof was among those titles destroyed in a fire which struck the Quezon City Hall in 1988. As proof that her father Homer Barque owned Lot No. 823 of the Piedad Estate, she presented copies of various Tax Declarations from 1986 up to 1996 and Plan of Lots 823-A and 823-B, Fls-3168-D dated April 24, 1998. Her father acquired the property from Emiliano P. Setosta pursuant to a Deed of Absolute Sale dated September 24, 1975 (Exh. 14[103]). Emiliano P. Setosta was issued TCT No. 13900 but despite diligent efforts she could no longer locate it. She was able to obtain the following documents from the LRA and Bureau of Lands: (a) Certified true copy of the approved Subdivision Plan of Lot 823 of the Piedad Estate for Emiliano Setosta dated June 21, 1940, containing an area of 342,945 square meters (Exh. 3[104]); (b) Certified true copy of the File Copy from the Bureau of Lands of said Subdivision Plan now bearing the typewritten notation "VALIDATION DENR A.O. No. 49 1991" (Exh. 4[105]); (c) Certification dated April 11, 1996 from the LRA issued by Felino M. Cortez, Chief, Ordinary and Cadastral Decree Division stating that "as per Record Book of

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[101] *Id.* at 8590-8591.

[102] *Id.* at 8592-8593.

[103] CA *rollo,* Vol. IV, pp. 920-921.

[104] *Id.* at 903.

[105] *Id.* at 904-905.

Decrees for Ordinary Land Registration Cases, (OLD) CLR Record No. 5975, Rizal was issued Decree No. 6667 on March 8, 1912", which appears in TCT No. 210177 in the name of Homer L. Barque, Sr. (Exh. 5[106]); (d) Certified true copy of the survey plan (microfilm enlargement of Fls-3168-D with the signatures of Privadi J.G. Dalire and Carmelito Soriano, which she got from the Bureau of Lands (Exh. 6[107]); (e) Certified photocopy of BL From 31-10 showing the technical descriptions of Lots 822, 823, 824 and 826 (Exh. 7[108]); and (f) BL Form No. 28-37-R dated 11-8-94 which shows the lot boundaries, also obtained from the Bureau of Lands (Exh. 12[109]).[110]

On cross-examination, the witness said that she is engaged in selling subdivision lots and many attempted to sell Lot 823 but nobody buys it. Emiliano Setosta was introduced to her by her father in 1974 or 1975 when she was in her 30s. Her father did not discuss with the family his transaction with Emiliano Setosta and she learned about it when her father was sick and dying in 1989. When asked why it was only in 1989 that she discovered that her father purchased thirty four (34) hectares of land from Emiliano Setosta, she answered it was wayback in 1985. Asked again as to when she learned for the first time of the purchase of the subject lot by her father, she replied that it was sometime in 1989 after the fire which gutted the Register of Deeds in 1988. In 1985, when her mother was sick of cervical cancer, her father borrowed money from her *Lola* Felisa to purchase the subject lot. When asked about such money borrowed by her father in 1985, she said that her father bought the property in 1975 and the money borrowed by her father was used for the hospitalization of her mother. Her father left the title of the subject lot to her *Lola* Felisa before his death in 1991. After her father's death, her sister found a tax declaration covering

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[106] *Id.* at 907.

[107] *Id.* at 908.

[108] *Id.* at 909.

[109] *Id.* at 918.

[110] CA *rollo*, Vol. V, pp. 1793-1803; TSN, November 12, 2009, pp. 64-66 (CA *rollo*, Vol. X, pp. 5877-5879).

Lot 823 which was burned by her sister along with other belongings of their father. In filing a petition for administrative reconstitution, she applied for the issuance of a tax declaration; the tax declaration she secured was "new" and the property "undeclared." When asked why, she said that the lawyer of her father who is 89 years old told them how to do it because "we do not have tax declaration". When asked again why the property is "undeclared," she replied that the OIC of the Assessor's Office in the person of Mr. Viloria told her that the tax declaration of her father was lost because of "*saksak-bunot*". In the early part of 1999, a certain Atty. Quilala of the Register of Deeds told her that another person filed a petition for reconstitution; he gave her copies of a tax declaration and title in the name of Felicitas Manahan married to Rosendo Manahan.[111]

As for the title of the Manotoks, nobody told her about it when she was securing a new tax declaration. Before 1979, she had visited the property which had no fence then. She was not actually interested, she just went there for a visit with her friends to boast that her father bought something that is big. She only learned there was somebody occupying their land after she had paid the taxes and submitted documents which were transmitted to the LRA; it was the reconstituting officer who told her that the title has been reconstituted already. She had not seen before any structure inside the property. The reconstituting officer made it hard for her to have administrative reconstitution of her title, verifying if she had an approved plan. She admitted that as shown in the Deed of Conveyance No. 4562 dated May 4, 1937 (Exh. 1[112]), the lot was paid in Japanese war notes despite the fact that the war started only on December 8, 1941. She was not able to bring with her the original copy of TCT No. 210177 because it was mortgaged on June 15, 2007 and the same is in the possession of Cedric Lee (president of Isumo Corporation) from whom she received ₱10,000,000.00; Mr. Cedric Lee will buy the property. Her sister was to be operated at that time and

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[111] TSN, November 12, 2009, pp. 72-110 (CA *rollo*, Vol. X, pp. 5884-5922).

[112] CA *rollo*, Vol. IV, p. 901.

she was forced to borrow money. Mr. Lee wanted to be ahead of Ayala, Megaworld, and others, in offering to buy the property. She admitted that they never tried to occupy Lot No. 823 after learning that her father owned it in 1985. They were then employed and had a bus line (Mariposa Express); her father bought other properties but she was not privy to this. Exhibits 34, 35, 35-A and 35-B[113] pertaining to the claim of Manahans were given to him not by Atty. Quilala but by Atty. Bragado. She never saw the title of Emiliano Setosta as her father transferred immediately the title in his name (TCT No. 210177).[114]

As to the Sale Certificate and Deed of Conveyance in the name of Emiliano Setosta, she did not yet know its number or date when she asked for a copy in the LMB (she went there accompanied by Castor Viernes), they just located it. After two (2) days she returned and the person in-charge gave her a certified xerox copy of Deed of Conveyance No. 4562 and Sale Certificate No. V-321 (Exh. 1), which documents were later authenticated by the LMB. The caption of this document dated May 4, 1937 reads: "Republic of the Philippines, Department of Agriculture and Commerce, Office of the Secretary": she agrees though that the Republic of the Philippines was not yet established at the time the document was executed. It also mentioned the "Civil Code of the Philippines" and the purchase price being fully paid with Japanese war notes in July 1942. Together with Engr. Castor Viernes, she got a Certification dated June 8, 2009 from Mr. Ignacio R. Almira which states that his office has available record of Deed of Conveyance No. 4562 (Exh. 1[115]) and Sale Certificate No. V-321 (Exh. 2[116]). She also secured the Certification dated April 13, 2009 issued by Ignacio R. Almira, stating that "according to our Registry Book upon verification that Lot No. 823, Piedad Estate under Sales Certificate No. 511

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[113] *Id.* at 967-970.

[114] CA *rollo,* Vol. V, pp. 117-133, 145-152; TSN, November 13, 2009 a.m., pp. 10-11, 15-17, 44-51, 56-58, 74-75 (CA *rollo,* Vol. X, pp. 6024-6025, 6029-6031, 6058-6065, 6070-6072, 6088-6089).

[115] CA *rollo,* Vol. IV, pp. 901.

[116] *Id.* at 902.

in favor of Valentin Manahan as assignor and Hilaria de Guzman Manahan… had no available record in this Office" (Exh. 30[117]). She later clarified that Ignacio R. Almira is not the custodian of the records of the LMB but Chief of the Regional Surveys Division certifying documents with the DENR; neither is Ignacio R. Almira the custodian of the records of the DENR.[118]

Engr. Castor C. Viernes, a former employee of the Bureau of Lands (1961-1972), identified in court the following documents he obtained through his research: (a) Certification dated June 19, 2007 issued by Rainier D. Balbuena, OIC, RMD, LMB, Binondo, Manila stating that according to verification of their records, "EDP's Listing has available record with Fls-3168-D, Lot 823, xerox copy of which is herewith attached, situated in Caloocan, Rizal (now Quezon City), in the name of Survey Claimant Emiliano Setosta" (Exh. 10[119]); (b) Certification dated June 19, 2007 issued by LMB-RMD OIC Rainier D. Balbuena stating that according to verification of their records, the office has no available record of F-30510 and F-87330, situated in Piedad Estate, Rizal, in the name of M. Teodoro as Assignor, and Severino Manotok as Assignee, as per attached xerox copies of the Assignment of Sale Certificate No. 1054, according to the general index card" (Exh. 24[120]); (c) Certification issued by Ernesto S. Erive, Chief, Surveys Division, DENR-NCR stating that "plan Flr-67-D is not among those existing records on file in the Technical Records and Statistics Section of this Office. However, further verification should be made from Land Management Bureau, Binondo, Manila" (Exh. 26[121]); (d) Letter dated January 10, 2003 from Bienvenido F. Cruz, OIC, Geodetic Surveys Division, LMB, stating that Flr-67-D is not listed in the EDP listing (Exh. 27[122]); (e) Plan of Lot 823, Piedad Estate

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[117] *Id.* at 961.

[118] TSN, November 13, 2009 a.m., pp. 77-103, 128-129 (CA *rollo*, Vol. X, pp. 6091-6116, 6141-6142); CA *rollo*,Vol. IV, pp. 901-902, 961.

[119] *Id.* at 914.

[120] *Id.* at 949-951.

[121] *Id.* at 953.

[122] *Id.* at 954.

prepared by Geodetic Engineer Teresita D. Sontillanosa on April 23, 1998 (Exh. 28[123]); (f) TCT No. RT-22481 (372302) in the name of Severino Manotok IV, *et al*. indicating Payatas Estate as a boundary in the survey made in 1912 when Payatas Estate did not exist until 1923 (Exh. 29[124]); (g) Certification dated April 13, 2009 issued by Ignacio R. Almira, Chief, Regional Director Surveys Division, confirming the absence of any record in the DENR of Sale Certificate No. 511 issued to Valentin Manahan (Exh. 30[125]); (h) Certification dated August 27, 2002 issued by Bienvenido F. Cruz, OIC, Geodetic Surveys Division, LMB stating that Fls-3164 is not listed in the EDP Listing (Exh. 31[126]); (i) Letter dated March 12, 2003 from Atty. Crizaldy M. Barcelo, Assistant Regional Executive Director for Technical Services, DENR-NCR stating that their office has no record on file of Sale Certificate No. 511 in the name of Valentin Manahan and Sale Certificate No. 1054 in the name of Modesto Zacarias, Regina Geronimo and Felicisimo Villanueva, covering Lot 823, Piedad Estate, and advising Mr. Viernes to make a similar request with the LMB which has jurisdiction over friar lands (Exh. 32[127]); (j) Copy of TCT No. 250215 in the name of Felicitas Manahan, married to Rosendo Manahan issued on May 25, 1979 covering Lot 823, Piedad Estate with an area of 342,945 square meters given to Felicitas Manahan by the Register of Deeds of Quezon City (Exh. 34[128]); (k) Tax Declaration No. D-138-07070 in the name of Felicitas Manahan indicating that Lot 823, Piedad Estate is situated at Old Balara, Holy Spirit/ Capitol, Quezon City for the year 1996, with tax receipt and certification (Exhs. 35, 35-A and 35-B[129]); (l) Letter dated February 21, 2003 from Emelyne Villanueva-Talabis, Special

[123] *Id*. at 955.

[124] *Id*. at 957-960.

[125] *Id*. at 961.

[126] *Id*. at 962.

[127] *Id*. at 963.

[128] *Id*. at 967.

[129] *Id*. at 968-970.

Assistant to the LMB Director informing Mr. Viernes that his letter requesting for a certified copy of Sales Certificate Nos. 511 and 1054 was forwarded to the RMD on February 21, 2003 (Exh. 36[130]); and (m) Letter dated February 27, 2003 from Leonardo V. Bordeos, OIC of LMB-RMD informing Mr. Viernes that the latter's request cannot be granted because "the said records are still not in the custody of this Division" and suggesting that a similar request be made with the DENR-NCR (Exh. 37[131]).[132]

Engr. Viernes asserted that the subject property is not bounded by the Payatas Estate considering that when the Piedad Estate was surveyed in 1907, the Payatas Estate was not yet existing because it was surveyed only in 1923. The computation made by Engr. Barikwa *(sic)* and report made by Engr. Evelyn Celzo, and also the plotting of Marco Castro seems to be erroneous. The other parties claimed that the property described in TCT No. 210177 (Barques' title) is not located in Quezon City allegedly because when plotted to its tie line it appears to be 5,637.50 meters away from Lot 823. In the submitted title of the Barques, Lot 823-A of Fls-3168-D as described in the title is not readable; it seems to be 9,000 kilometers and not 4,000 kilometers. That is why when they plotted the tie line of Lot 823-A using the 9,786.6 meters from monument 16, it falls away from the map of Quezon City, something like more than five (5) kilometers away from the plotting using the tie line of the original Lot 823 of the Piedad Estate of 4,097.4 meters from monument 16. The witness said he showed his computation to his officemate, Geodetic Engineer Teresita Sontillanosa who agreed with his computation. He identified Comparative Report on TCT No. RT-22481 and TCT No. 210177 (Exh. 41), the Sketch Plans for Lots 823-A and 823-B (Exhs. 39 and 41[133]).[134]

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[130] *Id.* at 971.

[131] *Id.* at 972.

[132] Judicial Affidavit of Castor C. Viernes, CA *rollo*, Vol. V, pp. 1804-1812.

[133] CA *rollo,* Vol. VIII, pp. 4068-4079.

[134] TSN, November 13, 2009 p.m., pp. 7-16 (CA *rollo*, Vol. X, pp. 6276-6285).

Engr. Viernes denied that he was employed by the Barques for a fee. It was Mr. Gregorio Que, a friend of Mrs. Hernandez, the son of his client Mr. Domingo Que, who asked him to help verify the authenticity of the Barques' title. He obtained copies of TCT No. 250215 and tax declaration of the Manahans from Engr. Mariano Flotildes. As to the Barques' Exh. 1, he denied having a hand in securing said document but admitted he was with Teresita B. Hernandez when it was handed to her. Mrs. Hernandez presented a document to Mrs. Teresita J. Reyes for authentication, but he did not see the latter sign the certification because he was at the ground floor of the LMB talking to a friend; the document was already signed when it was handed to Mrs. Hernandez. He also did not see Ignacio R. Almira sign the Certification dated June 8, 2009 (Exh. 2). When he was still in the Bureau of Lands from 1961 to 1972, he was holding the position of Computer II in-charge of the verification of cadastral survey returns; he was not then involved in the actual survey of lots because he was a Civil Engineer and not a Geodetic Engineer. He admitted that he was not able to conduct an actual survey of Lots 823-A and 823-B of the Piedad Estate.[135]

The Barques presented as witnesses in rebuttal Engr. Castor Viernes, Teresita Barque-Hernandez, Dante M. Villoria and Engr. Mariano Flotildes.

Engr. Viernes declared that Mrs. Hernandez had told him that it appeared during her cross-examination in court that the alleged Deed of Conveyance No. 4562 is spurious. A copy of said deed of conveyance (Exh. 44) was given to him by the LMB sometime in March 1997 which he in turn submitted to Mr. Que. Mr. Que had asked him to verify Lot 823 because Mrs. Teresita Barque Hernandez wanted to borrow money from him on the title of said lot. When asked why he did not include Deed of Conveyance No. 4562 among the fourteen (14) documents he found pertaining to the property of Homer L. Barque, Sr. despite his earlier testimony that he got a copy thereof from the LMB on March 14, 1997, Engr. Viernes explained that the Deed of Conveyance was not among those he would be testifying

[135] *Id.* at 27-42 (*Id.* at 6295-6310).

and was not mentioned in the previous affidavit that he had signed. When asked why Deed of Conveyance No. 4562 marked as Exh. 1 is dated January 25, 1938 while the Deed of Conveyance No. 4562 marked as Exh. 44 is dated May 4, 1937, he answered that he does not know; neither was he aware that the name and address mentioned in the two (2) documents are also different (in Exh. 44 it is Emiliano T. Setosta who was resident of 2800 Santolan St., Sampaloc, while in Exh. 1 it stated that Jose Setosta who was named therein was a resident of Bustillos, Sampaloc. Mrs. Hernandez was claiming the lot which she said is located in Culiat, but based on the maps it is situated in Matandang Balara. If the name of the place where the property is located is incorrect, the technical description should be corrected to conform to the lot's actual location.[136]

Teresita Barque-Hernandez testified that she did some research on the alleged practice among employees of the Bureau of Lands of issuing fake documents and was dismayed to discover that Atty. Fe T. Tuanda, a high-ranking official of the LMB, was suspended from the practice of law, and her credibility is in question after having been charged with violation of B.P. Blg. 22. She described the practice of "*saksak-bunot*" wherein documents are inserted in the records of the LMB, and people submit documents from their own personal file after which they would ask for certification or a certified copy thereof. She admitted that Exh. 1 which was presented by her lawyer was a falsified document, and that she was fooled by somebody from the Bureau. However, she was sure of the authenticity of Exh. 44,[137] as it came from Mr. Que. When confronted with Exh. 44 which stated that the price of Lot 823 was ₱2,850.45 but only 50% thereof was paid allegedly by Emiliano Setosta, she lamented that she was not yet born at the time of the transaction – January 25, 1938 – and did not know what really happened. She denied asking for re-authentication after the conduct of her cross-examination which tended to show that her Exh. 1

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[136] TSN, December 14, 2009 p.m., pp. 69-83, 87-90, 97-101 (CA *rollo*, Vol. XIII, pp. 9502-9516, 9520-9523, 9530-9534).

[137] CA *rollo*, Vol. IX, p. 5436.

was a forgery and after Teresita Reyes testified that the latter's signatures thereon were forged. She affirmed that she went to Mr. Que in the early part of 1997 to borrow money in order to redeem the property covered by TCT No. 210177, which was mortgaged by her father to the sister of her *lola* in 1985. She received a total of ₱2,000,000.00 from Mr. Que; thereafter, she went to another lender, Mr. Jesus Lim, from whom she secured a loan of the same amount. She paid the loan to Mr. Lim with the proceeds of yet another loan from Mr. Cedric Lee.[138]

Dante M. Villoria, retired City Assessor of Quezon City, declared in his Judicial Affidavit that Lot 823 is located in Barangay Matandang Balara, which has existed as a separate *barangay* from Barangay Culiat even before they were transferred from Caloocan City to Quezon City in 1939.[139] He testified that it is the technical description of the property that determines its identity, regardless of the name of its location. He was shown Tax Declaration No. 06895 in the name of the Barques (Exh. 123[140]-Manotoks) which contains a memo on the lower left hand portion which reads "this property appear[s] to duplicate the property of Manotok Realty, Inc., declared under [Tax Declaration Number] D-067-02136 with area of 342,945 sq.m./ P.I. No. 21-4202", and was asked if that meant that the tax declaration in the name of Manotok Realty Inc. existed before the tax declaration in favor of the Barques. Upon the objection of his counsel, the witness vacillated and said he is not certain as he has to see first the tax declaration of the Manotoks to determine which came ahead. However, he affirmed that if such memo is written on a tax declaration, it means that the information stated in the memo was already available on the date of the tax declaration. As to the statement on the reverse side of

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[138] TSN, December 14, 2009 p.m., pp. 136-149, 152-160, 176, 179-186, 194-207 (CA *rollo*, Vol. XIII, pp. 9570-9583, 9586-9594, 9610, 9613-9620, 9628-9641).

[139] CA *rollo,* Vol. IX, pp. 5429-5431.

[140] *Id.* at 5444.

Exh. 124[141]-Manotoks on the portion indicating the tax declaration cancelled there is an entry "new" ("undeclared"), witness explained that it means that there was no tax declaration for the same property in the name of the Barques prior to the said tax declaration. He then clarified by saying that while there is an existing tax declaration, they still issued another tax declaration because the documents presented as basis therefor were legal and binding. He admitted that their office will issue several tax declarations covering the same property even with the knowledge that the tax declaration can be used as evidence for ownership because the main concern is to collect more taxes.[142]

Engr. Mariano Flotildes declared in his Judicial Affidavit that Rosendo Manahan engaged his services in 1998 and gave him a relocation plan, photocopy of TCT No. 250215 in the name of Felicitas Manahan, field notes cover of the survey returns, complete lot survey data, traverse computation and azimuth computation. After signing the relocation plan in March 1998, Mr. Manahan submitted the Relocation Survey and the related documents to DENR-NCR, Surveys Division. Thereafter, Relocation Survey Number Rel-00-000822 was issued in favor of Felicitas Manahan.[143] He testified that he was commissioned by Rosendo Manahan sometime in 1998 to conduct a relocation survey of a property owned by his wife, Felicitas Manahan, covered by TCT No. 250215. His findings coincided with the technical description of said title, duly certified by the Register of Deeds of Quezon City, which was shown to him together with the full print survey returns, tax declaration, field notes cover (Exh. 45[144]), plot data computation, traverse computation (Exh. 47[145]) and azimuth computation (Exh. 48[146]) and the plan

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[141] *Id.* at 5445 (back).

[142] TSN, December 14, 2009 p.m., pp. 211-219, 225- 240, 242-245 (CA *rollo*, Vol. XIII, pp. 9648-9654, 9660-9675, 9677-9680).

[143] CA *rollo*, Vol. IX, pp. 5421-5423.

[144] *Id.* at 5425 and 5437.

[145] *Id.* at 5427 and 5439.

[146] *Id.* at 5428 and 5438.

itself. However, the relocation plan for the Manahans was not approved by the Bureau of Lands. It was Rosendo Manahan who gave him a copy of TCT No. 250215 (Exh. 34), from which was derived the information found in the plot data of Lot No. 823 (Exh. 46[147]); these were not based on documents from the Bureau of Lands.[148]

Other documentary evidence formally offered by the Barques are the following: Exh. 8 – "Certified copy of Logbook Entries of Destroyed and Salvaged Documents" in the fire which razed the office of the Register of Deeds of Quezon City on June 11, 1988;[149] Exh. 9 – "Certified Copy of the Bureau of Lands' Computer Printout of the List of Locator Cards by Box Number as of February 4, 1982" to prove that Fls-3168-D has been duly entered in the microfilm records of the Bureau of Lands and assigned with Accession No. 410436 appearing on page 79, Preliminary Report No. 1, List of Locator Cards by Box Number, as of February 4, 1984, copy of EDP Listing certified by Teresita J. Reyes, OIC, LMB-RMD;[150] Exh. 11 – Certified Xerox Copy of the Tax Map of Quezon City dated April 21, 1998 issued by the Tax Mapping Division, City Assessor's Office, Quezon City to prove the veracity of the subdivision of Lot No. 823 Piedad Estate into Lots No. 823-A and 823-B;[151] Exh. 13 – Certification dated 27 September 1996 issued by the Register of Deeds of Quezon City attesting that "based on the List of Salvaged Titles prepared by the Land Registration Authority, TCT No. 210177 was not included as among those saved from the fire of June 11, 1988";[152] Exh. 15 – Acknowledgment Receipt dated September 24, 1975 issued by Emiliano Setosta, confirming the payment given to him by Homer L. Barque, Sr. in the amount

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[147] *Id.* at 5426 and 5440.

[148] TSN, December 14, 2009 p.m., pp. 267-270, 272-287, 290-294, 307-310, 314-315 (CA *rollo,* Vol. XIII, pp. 9702-9705, 9707-9722, 9725-9729, 9742-9745, 9749-9750).

[149] CA *rollo,* Vol. IV, p. 911.

[150] *Id.* at 912.

[151] *Id.* at 917.

[152] *Id.* at 919.

of ₱350,000.00 for the purchase of Lots 823-A and 823-B, located in Matandang Balara, Quezon City;[153] Exh. 16 – Certification dated August 13, 1997 issued by the Regional Trial Court (RTC) of Manila stating that an instrument entitled "Deed of Absolute Sale" between Emiliano P. Setosta (vendor) and Homer L. Barque, Sr. (vendee) was notarized by Atty. Eliseo Razon on September 24, 1975 and entered in his Notarial Register, under Doc. 416, Page No. 85, Book No. VIII, Series of 1975;[154] Exh. 18 – Certified True Copy of the Owner's Duplicate Copy of TCT No. 210177 in the name of Homer L. Barque, Sr.;[155] Exhs. 19 to 19-H - Tax Declaration Nos. 06893 (1996) and 06892 (1987) in the name of Homer L. Barque, Sr. m/to Matilde Reyes and Real Property Tax Bills/Receipts;[156] Exh. 20 - Certification issued by Nestor D. Karim, *Kagawad*/Official-On-Duty of Bgy. Culiat, Area XII, District II, Quezon City, attesting that there is no Payong Street or place in the *barangay*;[157] Exh. 21- Letter dated April 14, 1998 from Dante M. Villoria, Assistant City Assessor of Quezon City addressed to the Law Division, LRA affirming that "[a]s per our record, there is no Barrio Payong in Quezon City";[158] Exh. 22 - Certification dated August 10, 2007 issued by the City Assessor, Quezon City stating that "there is no *Barangay* or Barrio Payong in Quezon City as per office record";[159] Exhs. 23 to 23-L - Barangay Profile of Matandang Balara, District III, Area 15 as of May 2000 (NSO) issued by the Office of the City Mayor, Quezon City, which shows that Bgy. Matandang Balara was created on May 10, 1962 pursuant to Ordinance No. 5068 and describes the barangay's boundaries, and thus prove that TCT No. RT-22481 (372302) in the name of Severino Manotok IV, *et al*. and Sales Certificate No. 511 in the name of Felicitas Manahan are fake

[153] *Id*. at 922.

[154] *Id*. at 923.

[155] *Id*. at 926.

[156] *Id*. at 927-932.

[157] *Id*. at 933.

[158] *Id*. at 934.

[159] *Id*. at 935.

and spurious;[160] Exh. 25 – Certification dated July 19, 2007 issued by Rainier D. Balbuena, OIC of LMB-RMD stating that according to their records, there is no available record of a Deed of Sale No. 1054 allegedly in the name of M. Teodoro and/or Severino Manotok covering the property situated in Piedad Estate, Caloocan, Rizal;[161] Exh. 32 - Letter dated March 12, 2003 from Atty. Crizaldy M. Barcelo, Assistant Regional Executive Director for Technical Services, DENR-NCR stating that they have no record on file of Sale Certificate No. 511 in the name of Valentin Manahan and Sale Certificate No. 1054 in the name of Modesto Zacarias, Regina Geronimo and Felicisimo Villanueva covering Lot 823 of the Piedad Estate;[162] Exh. 33 – Copy of Sale Certificate/Assignment of Sale Certificate No. 511 in the name of Valentin Manahan (assignor) and Hilaria de Guzman (assignee), with same date as Sale Certificate No. 511 - *June 24, 1939* showing the "Department of the Interior, Bureau of Lands" when in fact the Department of the Interior was abolished pursuant to Act No. 2666 on November 18, 1916 and its transfer and functions were transferred to the Department of Agriculture and Natural Resources (DANR), and in 1932 another reorganization act was passed providing, among others, for renaming of the DANR to Department of Agriculture and Commerce (DAC);[163] Exh. 33-A - Deed of Conveyance in the name of Felicitas Manahan, married to Rosendo Manahan purportedly issued on December 3, 2000 by the Director of Lands, Office of the Secretary, DANR despite the fact that said department was renamed Department of Environment and Natural Resources (DENR) pursuant to Executive Order No. 192 issued on June 10, 1987;[164] Exh. 37 – Certified true copy of the Property Identification Map of Barangay Matandang Balara issued by the City Assessor of Quezon City to prove that the records of the Bureau of Lands

[160] *Id.* at 936-948.

[161] *Id.* at 952.

[162] *Id.* at 963.

[163] *Id.* at 965 (See Offer of Evidence by the Barques, CA *rollo*, Vol. XII, pp. 8556-8558).

[164] *Id.* at 966 (*Id.* at 8558-8559).

conform to and confirm the metes and bounds contained in the full technical description of Lot 823, Piedad Estate embodied in TCT No. 13900 in the name of Emiliano Setosta and TCT No. 210177 in the name of Homer L. Barque, Sr., and which also shows Lots 823-A and 823-B subdivided lots;[165] Exh. 38 - Certification dated May 12, 1998 issued by Ernesto S. Erive, Chief, Surveys Division, DENR-NCR for the Regional Technical Director, with approval recommended by Veronica S. Ardina Remolar, Chief, Technical Records and Statistics Section, stating that "plan Psu-32606, as surveyed for the Payatas Estate IMP Co., situated in Montalban and San Mateo, Rizal, with an area of 36,512.952 sq.m. and originally approved on *Jan. 12, 1923* is among those existing reconstructed records on file in the Technical Records and Statistics Section of this Office," to prove that the Payatas Estate could have been claimed by the Manotoks as a boundary of Lot 823, Piedad Estate since Payatas Estate was created only on June 12, 1923;[166] Exh. 42 - Certification dated August 24, 2007 issued by Gregorio Faraon of the RTC of Manila stating that the document entitled "Deed of Absolute Sale" executed between Emiliano P. Setosta (vendor) and Homer L. Barque, Sr. (vendee) exists in the notarial files and was among the documents notarized, reported and submitted by Atty. Eliseo A. Razon, in his notarial book for the month of September 1975, under Doc. No. 416, Page No. 85, Book No. VII, series of 1975;[167] Exh. 43 - Certification dated March 14, 1997 issued by Amando Bangayan stating that "the only available record on file in this Office is the Deed of Conveyance/Sales Certificate issued to Emiliano Setosta covering Lot No. 823, Piedad Estate, Caloocan, Rizal"[168] with attached copy of Deed of Conveyance No. 4562 dated January 25, 1938 (Exh. 44); Exh. 49 – Certification dated November 23, 2009 issued by Atty. Ma. Cristina B. Layusa, Deputy Clerk of Court & Bar Confidant, Supreme Court, stating that "Atty. Fe T.

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[165] CA *rollo,* Vol. VIII, p. 4066.

[166] *Id.* at 4067.

[167] CA *rollo,* Vol. XII, p. 8577.

[168] CA *rollo,* Vol. IX, p. 5419.

Tuanda has been suspended from the practice of law as imposed in a Decision of the Court of Appeals dated 17 October 1988 in CA-G.R. Cr # 05093;[169] and Exh. 51 – Certified Microfilm Copy of the Articles of Incorporation of Manotok Realty, Inc. issued by the Securities and Exchange Commission (SEC) showing its date of incorporation as of September 11, 1950, which was after the issuance of TCT No. 13900 in the name of said corporation on August 31, 1950.[170]

Exhibits 1 (certified copy of Deed of Conveyance Record No. 4562 with Sale Certificate No. V-321 in the name of Emiliano Setosta, and 2 (Certification dated June 8, 2009 issued by Ignacio R. Almira, Chief, Regional Surveys Division, DENR), marked during the pre-trial were not formally offered by the Barques.

D. ***Manahans***

Rosendo Manahan declared in his Judicial Affidavit that Lot 823 of the Piedad Estate belongs to his wife by virtue of Deed of Conveyance No. V-2000-22 dated October 30, 2000 issued to her by the LMB. However, his wife has no certificate of title because the LRA Administrator declared that her deed of conveyance is non-registrable at this time because there are two (2) other claimants to the lot — Severino Manotok IV, *et al*. and the Heirs of Homer L. Barque, Sr. Thus, his wife filed a petition for *mandamus* with the CA to compel the LRA to allow the registration of Deed of Conveyance No. V-2000-22 and issuance of the corresponding title in the name of Felicitas Manahan. However, the CA denied the petition, and they filed a petition for review with the Supreme Court where the case is still pending. He had assisted his wife in working for the issuance of a certificate of title and did a lot of record searching. The Manotoks have no valid claim over Lot 823 as their documents have been found to be spurious and not authentic by the NBI and LMB. As to the Barques who claimed that their plan has accession number, the witness asserted that Accession No. 410436

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[169] *Id.* at 5434.

[170] See CA Commissioners' Report, p. 144.

is in the name of Nicolas Apo, *et al*. as shown in Exh. XXXII.[171] Moreover, the technical description of the lot being claimed by the Barques when verified and plotted by DENR-NCR, LRA and private surveyor Jose R. Baricua, is outside Quezon City and 5.8 kilometers away from Lot 823 as shown in Exhs. XXVIII, XXIX, XXX and XXXI.[172]

Rosendo Manahan testified that the documents relied upon by the Manotoks were submitted for verification by the LMB to the NBI and found to be fake and spurious. A very thorough search of documents covering Lot 823 by the LMB and DENR yielded only documents in the name of the Manahans but no genuine document in the name of the Manotoks. The claim of the Barques that they own Lot 823 is likewise false considering that the files of the LMB and DENR do not have Sale Certificate No. V-321 and Deed of Conveyance No. 4562. The technical description of the lot claimed by the Barques, when plotted by the private prosecutor Jose Baricua and the DENR-NCR as well as LRA, showed that it is outside Quezon City and 5.8 kilometers away from Lot 823 of the Piedad Estate (Exhs. XXVIII, XXIX, XXX and XXXI[173]). The Deed of Conveyance No. 29204 of the Manotoks had no signature of the Secretary of Agriculture and Commerce, and he had not seen any copy thereof in the records of the LMB.[174]

On cross-examination, Rosendo Manahan testified that his father Lucio Manahan and mother Hilaria de Guzman were born in Malolos, Bulacan; he was also born and lived there almost his life. In 1945 or 1946 when he was about seven (7) years old, his grandfather Valentin Manahan brought him to Lot 823. His grandfather died in 1948, his grandmother died later at the age of 93. His wife Felicitas bought Lot 823 for ₱350,000.00 because his other siblings had no money to buy

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[171] CA *rollo,* Vol. IV, p. 1073.

[172] CA *rollo,* Vol. V, pp. 1766-1771.

[173] CA *rollo,* Vol. IV, pp. 1065-1072.

[174] TSN, November 19, 2009 a.m., pp. 97-99, 101-105, 111-113 (CA *rollo,* Vol. X, pp. 7152-7154, 7156-7160, 7166-7168) .

the property. He met Evelyn Celzo when he accompanied his wife to the regional Office; they had no intervention in the preparation of her report. He cannot recall if Evelyn Celzo asked his wife about Valentin Manahan's application and assignment of Lot 823, nor of the death of Lucio Manahan, Felicitas told Celzo that Hilaria de Guzman went to the property but she was denied entry by heavily armed men. When he was about eight (8) years old, his father would take him from Malolos to Quezon City to see Lot 823, and his parents took over Lot 823 when his grandparents Valentin Manahan and Placida Figueroa after 1939 went back to Malolos, specifically Barrio Pulilan.[175]

Rosendo Manahan asserted that Sale Certificate No. 511 (Exh. XXXVII[176]) was issued as early as 1913; he had verified its existence in the records of the LMB. However, he had sent letters — the last being in 1998 — asking for a certification, to no avail; despite a thorough search for the document in the LMB and DENR, it could not be found. He did not think of obtaining copy of the document from the National Archives because as far as his layman's understanding, the main purpose of the National Archives is to keep and preserve documents of historical and cultural value. Sometime in 1974, he obtained a xerox copy of Sale Certificate No. 511 from his mother in Malolos and furnished the LMB with a copy thereof as reference. When he verified with the LMB in 1997, he actually saw an assignment of sale certificate, not the sale certificate itself. He had knowledge of the tax declarations that his wife filed for Lot 823 in 1997. The tax declarations submitted by the Barques caught them by surprise; these were not the same as those filed by his wife but he did not bother about it as they were spurious. He and his wife secured tax declarations in 1997 upon the advice of people who were helping them pursue their case with the LMB. His

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[175] *Id.* at 114-119, 124-128, 132-138, 142-156 (*Id.* at 7169-7174, 7179-7183, 7187-7193, 7197-7211). TSN, November 19, 2009 p.m., pp. 6-16 (CA *rollo*, Vol. XIII, pp. 8826-8836).

[176] CA *rollo*, Vol. VIII, p. 4099.

wife secured a special plan, not a relocation plan but he could not recall who prepared it.[177]

On redirect examination, the witness declared that he is claiming Lot 823, Piedad Estate, as described in the technical description, regardless of what the place it is located is called. Based on his study, Culiat was just a part of Matandang Balara before it was split into several *barangays*. He denied having filed a reconstitution proceeding; it was the Manotoks who filed for administrative reconstitution of their alleged title. When she read the report of Evelyn dela Rosa Celzo, he noticed in the penultimate paragraph stating "Documentary evidence hereto attached: [1] Sale Certificate No. 511", and so he tried to get a copy from the LMB but they could not show him any sale certificate, what they showed him was an assignment of sale certificate. He also tried to ask a copy of Fls-3164 but they only showed him the index card. When he learned about the 2nd Indorsement dated March 26 from Mamerto L. Infante, Regional Technical Director, Land Sector of DENR-NCR (Exh. XIV[178]), stating that a photocopy of the sale certificate was transmitted to the LMB, he was able to get a photocopy of Sale Certificate No. 511 and also Index card of Fls-3164. He discovered later that there was no more original or certified copy of Sale Certificate No. 511 with the LMB. As to TCT No. 250215 in the name of Felicitas Manahan, married to Rosendo Manahan, Tax Declaration of Real Property No. D-138-07070, and tax Bill Receipt No. 183999 which were secured by the Barques, the witness denied having anything to do with those documents.[179]

Felicitas B. Manahan declared in her Judicial Affidavit that her grandfather-in-law Valentin Manahan occupied and cultivated Lot 823, and had it surveyed on November 16, 1938. On December 13, 1939, survey plan Fls-3164 prepared in his name

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[177] TSN, November 19, 2009 p.m., pp. 20-38, 42-47, 73-79, 85-86, 154-159 (CA *rollo*, Vol. XIII, pp. 8840-8859, 8862-8867, 8893-8899, 8905-8906, 8974-8979).

[178] CA *rollo*, Vol. IV, pp. 1013-1017.

[179] TSN, November 19, 2009 p.m., pp. 94-100, 104-132 (CA *rollo*, Vol. XIII, pp. 8914-8920, 8924-8952).

was approved by the Director of Lands. Valentin Manahan's application to purchase Lot 823 was approved and after paying in full the purchase price of ₱2,140.00, he was issued Sale Certificate No. 511. Valentin Manahan assigned his rights over Lot 823 to his daughter-in-law Hilaria de Guzman, wife of his son Lucio Manahan and mother of her husband Rosendo Manahan (Exh. III[180]). With the aid of caretakers, Hilaria de Guzman and Lucio Manahan occupied Lot 823. However, in the middle of 1950s, a group of armed men ousted Hilaria de Guzman's caretaker on the lot. To protect her rights, Hilaria de Guzman declared the property for taxation purposes under TD No. 17624 effective 1959 and TD No. 1751 effective 1965. On August 23, 1974, Hilaria de Guzman sold her rights to Lot 823 in her favor, under Deed of Absolute Sale (Exh. X) believing that she could take effective measures in recovering the property. She then paid the real property tax and after making follow-up with the LMB and Malacañang thru then First Lady Imelda Marcos and LRA, Deed of Conveyance No. V-200022 was issued in her name by the LMB on October 30, 2000 (Exh. IV[181]). Deed of Conveyance No. V-200022 was forwarded to the Register of Deeds of Quezon City for registration and issuance of the corresponding title (Exh. XX[182]), letter of the LMB Director to the Register of Deeds of Quezon City, but in a "*Consulta*," the LRA Administrator declared that it is not registerable because of the existence of the titles of the Manotoks and the Barques. Hence, she filed a petition for *mandamus*, docketed as CA-G.R. SP No. 99177, to compel the LRA to allow the registration of Deed of Conveyance No. V-200022. However, the CA denied her petition, prompting her to file a petition for review with the Supreme Court (G.R. No. 184748) where the case is pending for decision. The documents on which the Manotoks base their claim is "false and untrue" because after conducting a "chemistry test" on those documents submitted by the LMB, the NBI concluded that they were not old as they purport to be

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[180] CA *rollo*, Vol. IV, p. 997.

[181] *Id.* at 998.

[182] *Id.* at 1048.

(Exh. XXV[183]). The LMB, as repository of all records of all friar lands, conducted a thorough search of its files for documents covering Lot 823, but it found only documents issued to the Manahans and no genuine document covering Lot 823 in the name of Severino Manotok or his alleged predecessors-in-interest. The DENR likewise conducted an investigation confirming the findings of the LMB embodied in its report (Exh. XVI[184]) that the documents of the Manotoks were spurious. The lot being claimed by the Barques, on the other hand, based on their technical description, as plotted by private surveyor Jose Baricua and the DENR-NCR as well as LRA, is outside Quezon City and 5.8 kilometers away from Lot 823 of the Piedad Estate (Exhs. XXVIII, XXIX, XXX and XXXI).[185]

Felicitas Manahan identified the following documents in court: (a) Letter dated July 10, 2009 of Teresita J. Reyes stating that "Deed of Conveyance No. V-4562 was issued on June 28, 1955 in favor of PAULINO DIGALBAL covering a parcel of land situated in Naic, Cavite identified as Lot No. 1540-N, Naic Friar Land Estate containing an area of 1.1396 hectares, and that the same was transmitted to the Register of Deeds of Cavite on July 13, 1955" and that further verification disclosed that "this Office has no record/copy of the alleged Deed of Conveyance No. 4562 (Sale Certificate No. V-321) purportedly issued in the name of EMILIANO SETOSTA supposedly covering a parcel of land identified as Lot No. 823, Piedad Friar Land Estate, situated in Quezon City" (Exh. XXXVIII[186]); (b) Letter dated August 27, 2009 of Atty. Fe T. Tuanda, OIC Chief, LMB-RMD stating that "this Office has no record of the alleged Deed of Conveyance No. 29204 purportedly issued on December 7, 1932 supposedly covering a parcel of land situated in Caloocan, Rizal, now Quezon City, identified as Lot No. 823, Piedad Friar Lands Estate (Exh. XXXIX[187]); and (c) xerox copy of

[183] *Id.* at 1062.

[184] *Id.* at 1023-1030.

[185] CA *rollo,* Vol. V, pp. 1773-1778.

[186] CA *rollo,* Vol. VIII, pp. 4100-4105.

[187] *Id.* at 4106.

Sale Certificate No. 511 dated June 24, 1913 (Exh. XXXVII[188]) which was given to her by her mother-in-law when the latter signed the deed of sale. The witness explained that they did not attach a copy of Sale Certificate No. 511 because the CA ordered that only certified copies are to be attached to the pre-trial brief, and also said that she tried to secure a certified copy of Sale Certificate No. 511 but the LMB and DENR could not give her the same.[189]

On cross-examination, Felicitas Manahan testified that her mother-in-law was living in Malolos, Bulacan but occupied Lot 823 in 1939 by hiring caretakers to till the land. After the assignment of Lot 823 from Valentin Manahan to Hilaria de Guzman, her father-in-law Lucio Manahan frequently visited Lot 823 to oversee the caretakers. Since 1976, she and her husband resided in Manila where they rented a house. In 1974, Hilaria de Guzman told her she wanted to sell Lot 823 and after Hilaria had signed the deed of sale and was paid in cash ₱350,000.00, she obtained from Hilaria the sale certificate, assignment of sale certificate and a sketch plan. However, when she visited the land in 1981, she was told by an elderly man not to return and aspire to recover the land because it belonged to Imee Manotok. When she went there in 1979, the property was not fenced and it seemed to her there were no occupants. She met Evelyn dela Rosa in March 1979 and again in the year 2000 at the DENR. Evelyn dela Rosa asked questions about the property and her grandfather–in-law Valentin Manahan. Despite having seen Lot 823 vacant in 1979, 1981 and in 1989, she and her husband continued to live in Levytown. She had seen the original copy of Sale Certificate No. 511 mentioned in the 1st Indorsement dated February 23, 1999 of Mamerto L. Infante, Regional Technical Director of DENR-NCR's Lands Sector (Exh. XIII[190]). She gave the owner's duplicate copy of Sale Certificate No. 511 which she got from Hilaria to DENR-

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[188] *Id.* at 4099.

[189] TSN, November 23, 2009 a.m., pp. 13-55 (CA *rollo*, Vol. XII, pp. 8212-8254).

[190] CA *rollo*, Vol. IV, p. 1008.

NCR Director Pelayo in March 1989 without asking for a receipt. Director Pelayo, however, lost it. The witness clarified that the original copy of Sale Certificate No. 511 mentioned in Exh. XIII refers to the *assignment of sale certificate*. When Atty. Rogelio Mandar accompanied her for a site inspection of Lot 823 in 1997 or 1998, she saw men with firearms. On that occasion, she tagged along Policeman Fernandez from Parañaque as bodyguard because she knew of the presence of armed men in the property. However, she did not report the matter to the Quezon City Police.[191]

Atty. Roseller S. de la Peña, former Undersecretary for Legal Affairs of DENR and now Dean of the College of Law of Polytechnic University of the Philippines, declared in his Judicial Affidavit that in June 2000, he received a query from LMB Director Ernesto D. Adobo, Jr. on whether a deed of conveyance for Lot 823 of the Piedad Estate may be issued to Felicitas B. Manahan by virtue of Sale Certificate No. 511 issued to Valentin Manahan. In response to this query, he issued a Memorandum dated July 6, 2000 (Exh. XVII[192]) recommending the issuance of a deed of conveyance to Felicitas Manahan, as per verification with the LMB and the DENR-NCR, except for the subsisting records of Sale Certificate No. 511 in the name of Valentin Manahan, there is no record in said offices to show that the Manotoks filed an application for the property; there was no such sale certificate issued in the name of the Manotoks. Sale Certificate No. V-321 and Deed of Conveyance No. 4562 are also not found in the records of the LMB and DENR. He affirmed the comments and recommendations contained in Exh. XVII. In accordance with his recommendation, the LMB issued to Felicitas B. Manahan Deed of Conveyance No. V-200022 on October 30, 2000. The signing of deed of conveyance had been delegated effective 1997 to the Director of the LMB by means of General Memorandum Order No. 1, Series of 1997 issued

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[191] TSN, November 23, 2009 a.m., pp. 56-62, 69-79, 86-104, 107-108, 114-127, 129-133 (CA *rollo*, Vol. XII, pp. 8255-8261, 8268-8278, 8285-8303, 8306-8307, 8313-8326, 8328-8332).

[192] CA *rollo*, Vol. IV, pp. 1031-1035.

by the DENR Secretary. A *bona fide* settler can acquire a friar land only through conveyance by the LMB which is the agency authorized under Act 1120 to administer and dispose friar lands.[193]

Atty. Rogelio Mandar, Chief of the Claims and Conflicts Section, Legal Division, LMB, declared that he, together with Atty. Manuel B. Tacorda, Assistant Chief, Legal Division of LMB, were authorized by the LMB Director under Special Order No. 98-135 dated December 18, 1998 to conduct an investigation regarding Lot 823 of the Piedad Estate. It appears that on November 25, 1998, Felicitas Manahan filed a petition with the OSG for the cancellation/reversion proceedings against TCT No. RT-22481 (372302) issued in the name of Severino Manotok IV, *et al.*, which was referred by the OSG to the LMB for investigation and/or appropriate action. Thus, they collated all the pertinent available records and referred these to the NBI on April 21, 1999 for determination of the age of the documents; they also scheduled an ocular inspection of the land on July 15, 1999 and set the petition for hearing on December 13, 1999. The documents sent to the NBI were the following: (1) Sale Certificate No. 1054 in the name of Regina Geronimo, Modesto Zacarias and Felicisimo Villanueva (Exh. 10-Manotoks); (2) Assignment of Sale Certificate No. 1054 dated March 11, 1919 (Exh. 11-Manotoks); (3) Assignment of Sale Certificate No. 1054 dated June 7, 1920 (Exh. 12-Manotoks); (4) Assignment of Sale Certificate No. 1054 dated May 4, 1923 (Exh. 13-Manotoks); (5) Sale Certificate No. 651 in the name of Ambrosio Berones; (6) Assignment of Sale Certificate No. 651 dated April 19, 1930 in favor of Andres Berones who is the alleged predecessor-in-interest of Severino Manotok; and (7) Assignment of Sale Certificate No. 511 dated June 24, 1939 in the name of Valentin Manahan, the predecessor-in-interest of Felicitas Manahan (Exh. III-Manahans). The NBI submitted its Chemistry Report No. C-99-152 (Exh. XXV-Manahans) dated June 10, 1999 stating that the first six documents "could not be as old as it *[sic]* purports to be," while the seventh document, the

[193] Judicial Affidavit of Undersecretary Roseller de la Peña, CA *rollo*, Vol. V, pp. 1562-1572.

Assignment of Sale Certificate No. 511 dated June 24, 1939 showed "natural aging and discoloration of paper; it also exhibited a "water mark" which is distinct under transmitted light; the adhesive tapes were attached along creases and tears, and the paper did not exhibit the characteristics which were observed on the questioned documents.[194]

Atty. Mandar further declared that they were not able to conduct the ocular inspection of Lot 823 because armed men prevented them. There was a hearing held wherein the Manahans and the Manotoks agreed to submit the case for resolution on the basis of memoranda with supporting documents. Thus, a written report was submitted to the Legal Division Chief Atty. Alberto R. Recalde which served as the basis of the latter's Memorandum dated April 17, 2000 (Exh. XVI[195]), who held that TCT No. RT-22481 (372302) has no legal and factual basis, and therefore void *ab initio*; that records pertaining to Sale Certificate No. 511 in the name of Valentin Manahan – Assignment of Sale Certificate No. 511 dated June 24, 1939 – had been authenticated by both the report of investigation of Land Investigator Evelyn dela Rosa and NBI Chemistry Report No. C-99-152; and that Sale Certificate No. 651 in the name of Ambrosio Berones is unauthenticated. Their recommendation that steps be taken in the proper court for the cancellation of the Manotoks' title was approved by the LMB Director and sent to the DENR. LMB OIC-Director Ernesto D. Adobo, Jr. then issued an Order dated October 16, 2000 (Exh. XVIII[196]) which was forwarded to the Office of the Register of Deeds of Quezon City on December 13, 2000 for registration and issuance of corresponding title.[197]

Evelyn G. Celzo, nee Evelyn C. dela Rosa, Land Investigator/ Geodetic Engineer of DENR-NCR declared that she conducted

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[194] Judicial Affidavit of Atty. Rogelio Mandar, CA *rollo*, Vol. V, pp. 1753-1760.

[195] CA *rollo*,Vol. IV, pp. 1023-1030.

[196] *Id.* at 1036-1037.

[197] Judicial Affidavit of Atty. Rogelio Mandar, CA *rollo*, Vol. V, pp. 1753-1760.

an investigation of Lot 823, Piedad Estate, pursuant to Travel Order dated May 15, 1989 issued by North CENRO, Quezon City. She conducted an ocular inspection of the land and interviewed witnesses. She prepared a written Investigation Report dated July 5, 1989 (Exh. XV[198]). She confirmed the truth of her findings contained in said report. She made a very thorough search of the records of LMB Central Office but found no sale certificate covering Lot 823 other than that issued to Valentin Manahan. Lot 823 is covered by Fls-3164 in the name of Valentin Manahan. She categorically stated that there was no Sale Certificate No. 1054, Deed of Conveyance (Sale Certificate No. V-321) in the name of Emiliano Setosta and Fls-3168-D in the name of Emiliano Setosta existing in the records of the LMB Central Office.[199]

On cross-examination, Evelyn Celzo testified that she is not acquainted with Hilaria de Guzman but she knew her to be one (1) of the heirs of Lot 823, a property she owned and given by Valentin Manahan. During her investigation, she met and talked to Rosendo and Felicitas Manahan in her office. Mrs. Manahan did not supply all the information contained in her report. The information that Lot 823 was an agricultural land when Valentin Manahan took possession thereof as a farmer in 1908 came from the people she personally interviewed in the adjoining lots; she did not record the names of the persons she interviewed. However, she had no more notes of the interview she conducted. She had not referred the results of her interview nor the statements in her report to Felicitas. She admitted that she did not see the application for the purchase of the land stated in her report nor the Sale Certificate issued to Valentin Manahan; she also could not recall the name of the record officer whom she asked about the application of Valentin Manahan. After the assignment of the sale certificate, Hilaria de Guzman and her husband Lucio Manahan were not able to enter Lot 823 because they were

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[198] CA *rollo,* Vol. IV, pp. 1021-1022.

[199] Judicial Affidavit of Evelyn G. Celzo nee Evelyn C. de la Rosa, CA *rollo,* Vol. V, pp. 1746-1750; TSN, November 18, 2009 p.m., pp. 24-30 (CA *rollo,* Vol. X, pp. 6887-6893).

prevented by some people. Neighbors told her that Hilaria only visited the land. There was an old man in his 60s, whose name she cannot remember, told her that Lucio and Hilaria lived in Malolos, Bulacan. As to the requirements of an investigation report, these are provided in the Surveying Manual. She maintained that if one (1) already has a sale certificate given by the government, no other individual can claim that property. A report from the field to determine the location of the land is required for the issuance of a deed of conveyance. As to Valentin Manahan's survey plan, Fls-3164, it was approved on December 13, 1939, after which he applied for the purchase of Lot 823. After paying the sum of ₱2,140.00, Valentin Manahan was issued a sale certificate. She did not conduct another survey of Lot 823 because she is an investigator. Lot 823 was not fenced in 1989; she in fact walked around the property consisting of about thirty four (34) hectares. She cannot anymore remember the number of persons she had interviewed. She pointed out that the technical description appearing in TCT No. 250215 dated May 25, 1979 (Exh. 34-Barques) in the name of Felicitas Manahan married to Rosendo Manahan, is different from the technical description of Lot 823 appearing on Manahan's Exhibit VII[200] (Technical Descriptions of Lot 823). In their conversation, Felicitas Manahan never told her that she had a transfer certificate of title over Lot 823 as early as 1979.[201]

On redirect examination, Evelyn Celzo corrected a typographical error in the last paragraph of her report, in which the word "no" should be inserted between the words "since" and "deed" to read: "In this regard, since no deed of conveyance has been issued to the above applicant, it is hereby recommended that appropriate action be issued." She also identified her signature and the signature of Engr. Ludivina Aromin appearing on the sketch plan (Exh. XL[202]) showing that the land claimed by the Barques is 5639.59 meters from the lot claimed by the Manahans

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[200] CA *rollo,* Vol. IV, p. 1001.

[201] TSN, November 18, 2009 p.m., pp. 31-132 (CA *rollo,* Vol. X, pp. 6894-6992).

[202] CA *rollo,* Vol. IX, p. 4820.

based on the tie line; the tie line of Lot 823 of the Manahans is only 4,097.40, while the tie line of the Barques is 9,736.60.[203]

When confronted with the discrepancy in her computation based on the tie lines of Lot 823-A and Lot 823-B appearing on the technical description on TCT No. 210177, Evelyn Celzo said that they have copies of titles in their office and she could not make a decision whether it is the same title being shown to her by counsel (Atty. Carao, Jr.). Responding to clarificatory questions from the court, Evelyn Celzo admitted that she was not able to obtain information as to whether there are other claimants over Lot 823 aside from the Manahans and her investigation report was based on her ocular inspection of Lot 823 and research at the LMB. From her research in the LMB, she was not able to obtain information on whether or not there are other claimants of Lot 823 of the Piedad Estate.[204]

Teresita J. Reyes, who retired on July 14, 2009, was formerly OIC-Assistant Chief, RMD, LMB declared in her Judicial Affidavit that Exh. 1 of the Barques is not in the records of the LMB and that no Deed of Conveyance No. V-4562 and Sale Certificate No. V-321 issued to Emiliano Setosta mentioned in Exh. 1 is on file in the records of the LMB. These documents were instead issued to Paulino Bagalbal covering a parcel of land with an area of 1.1396 hectares, identified as Lot No. 1540-N of the Naic Friar Land Estate, located at Naic, Cavite, and forwarded to the Office of the Register of Deeds of Naic, Cavite, for registration and issuance of title. Her signature on the document (Deed of Conveyance No. 4562 in the name of Emiliano Setosta covering Lot 823) is a forgery. She identified her signature on the letter dated July 10, 2009 (Exh. XXXVIII[205]) addressed to Felicitas Manahan and confirmed the truth of its contents.[206]

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[203] TSN, November 18, 2009, p.m., pp. 165, 175-186 (CA *rollo*, Vol. X, pp. 7023, 7032-7043).

[204] *Id.* at 187-196 (*Id.* at 7044-7053).

[205] CA *rollo,* Vol. VIII, p. 4100.

[206] *Id.* at 4107-4109; TSN, November 19, 2009 a.m., pp. 5-9 (CA *rollo,* Vol. X, pp. 7060-7064).

On cross-examination, Teresita Reyes testified that a party requesting for a certified true copy of the records in the LMB had to file a written request which will be forwarded to the unit concerned and then to the Division. With respect to the records pertaining to friar lands, the sales registry books were decentralized to the regional offices of the bureau pursuant to Executive Order No. 292 issued in 1987. She did not know for sure what records were decentralized because she was assigned to the RMD only in 1997. She had been requested to authenticate or certify copies of records of Lot 823, Piedad Estate. However, she categorically denied that the signatures appearing on the certifications/ authentications of documents presented by the Barques (Exhs. 9, 10 and 25[207]), were her signature. The signature appearing in her affidavit is her genuine signature. The sales registry books in the regional office are copies of appropriate pages of the sales registry books in the main RMD. It is a very big and heavy book and is turned over to the regional offices. The RMD-LMB has an inventory of deeded books or lots subject of deeds of conveyance. *As for sales registry book, they no longer have it at the RMD*. Sales registry books contain the names of the claimants, the respective lot numbers and area, but the sale certificate itself would still be with the RMD in the file folders of particular lot number. Lot 823 of the Piedad Estate had several folders in the RMD. They also have a logbook listing the lots. If there is already a deed of conveyance, the records would be in a folder. These deeds of conveyance are not bound separately but are inside the folder of the particular lot number.[208]

Atty. Romeo C. Dela Cruz, counsel for the Manahans, testified in court and identified the letter dated July 4, 2009 (Exh. XXXV[209]) of Ignacio R. Almira Jr. addressed to him informing that the signatures appearing in Exh. 2 (Certification dated June 8, 2009 attesting that Deed of Conveyance record No. 4562 and Sale

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[207] CA *rollo,* Vol. IV, pp. 912-914, 952.

[208] TSN, November 19, 2009 a.m., pp. 12-17, 33-48, 64-84 (CA *rollo,* Vol. X, pp. 7067-7072, 7088-7103, 7119-7139).

[209] CA *rollo,* Vol. VIII, p. 4097.

Certificate No. V-321 covering Lot 823 in the name of Emiliano Setosta has available record in this office) and Exh. 30 (Certification dated April 13, 2009 attesting that Sale Certificate No. 511 in favor of Valentin Manahan (assignor) and Hilaria de Guzman (assignee) had no available record in this office) of the Barques are not his signatures.[210]

Aida R. Viloria-Magsipoc, NBI Forensic Chemist III, testified that the documents examined were submitted to the Forensic Chemistry Division from the LMB by Evelyn Celzo and the requesting party was Atty. Manuel Tacorda, Assistant Chief, Legal Division, LMB. She explained her findings in Chemistry Report No. C-99-152 (Exh. XXV[211]) on the following specimen documents: (1) Sale Certificate No. 1054 in the name of Regina Geronimo, Modesto Zacarias and Felicisimo Villanueva (Exh. XXV-A, front[212] and Exh. XXV-B,[213] back); (2) Assignment of Sale Certificate No. 1054 dated March 11, 1919 (Exh. XXV-F,[214] front and Exh. XXV-G,[215] back); (3) Assignment of Sale Certificate No. 1054 dated June 7, 1920 (Exh. XXV-J,[216] front and Exh. XXV-K,[217] back); (4) Assignment of Sale Certificate No. 1054 dated May 4, 1923 (Exh. XXV-N,[218] front and Exh. XXV-O,[219] back); (5) Sale Certificate No. 651 in the name of Ambrosio Berones (Exh. XXV-R,[220] front and Exh. XXV-S,[221]

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[210] TSN, November 23, 2009 p.m., pp. 5-18 (CA *rollo,* Vol. XII, pp. 8359-8371).

[211] CA *rollo,* Vol. IV, p. 1062.

[212] CA *rollo,* Vol. IX, p. 4790.

[213] *Id.* at 4791.

[214] *Id.* at 4795.

[215] *Id.* at 4796.

[216] *Id.* at 4799.

[217] *Id.* at 4800.

[218] *Id.* at 4803.

[219] *Id.* at 4804.

[220] *Id.* at 4807.

[221] *Id.* at 4808.

back); and (6) Assignment of Sale Certificate No. 651 dated April 19, 1930 (Exh. XXV-T,[222] front and Exh. XXV-U,[223] back). The seventh document (Assignment of Sale Certificate No. 511 dated June 24, 1939) was used as the standard (Exh. XXV-V,[224] front and Exh. XXV-W,[225] back).[226]

Explaining the word "examinations" in her report, the witness said that first, they did an ocular examination. Visualization includes photography, viewing the documents under direct light, under UV light, under infrared (IR) light using the stereoscope; and then chemical examinations to determine the kind of paper or reaction of the paper, and the reaction of the ink strokes that are on the questioned documents. A stereoscope enables one (1) to view the whole sheet of paper by just tilting the mouse (macro viewing), whereas for the microscope, you could view just a very small portion. After examination over UV, IR and direct light examinations, chemical examination is done on a paper wherein punch holes are taken from the pieces or sides of the document. Only these physical and chemical examinations were done on the questioned documents.[227]

The following photographs taken of the questioned documents were also presented: Exh. XXV-C,[228] the front close-up of the tear on top of the page of Sale Certificate No. 1054; Exh. XXV-D,[229] front close-up of uneven browning and discoloration of paper (Sale Certificate No. 1054); Exh. XXV-E,[230] front page

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[222] *Id.* at 4809.

[223] *Id.* at 4810.

[224] *Id.* at 4811.

[225] *Id.* at 4812.

[226] TSN, November 20, 2009 a.m., pp. 6-15, 25, 32-35, 46-50 (CA *rollo*, Vol. XII, pp. 8089-8098, 8109, 8116-8119, 8130-8134).

[227] *Id.* at 26-32 (*Id.* at 8110-8116).

[228] CA *rollo,* Vol. IX, p. 4792.

[229] *Id.* at 4793.

[230] *Id.* at 4794.

browning and discoloration of tears and creases along the edges of document (Sale Certificate No. 1054); Exh. XXV-F,[231] front of the Assignment of Sale Certificate No. 1054 dated March 11, 1919; Exh. XXV-G,[232] back portion of Assignment of Sale Certificate dated March 11, 1919; Exh. XXV-H[233], showing the staple wire marks that are clear and firm (Assignment of Sale Certificate No. 1054 dated March 11, 1919); Exh. XXV-I,[234] showing the aniline (violet) stamp pad ink entries that are clear and distinct (Assignment of Sale Certificate No. 1054 dated March 11, 1919); Exh. XXV-L,[235] showing the aniline (violet) stamp pad ink entries that are clear and distinct with handwritten entries and signatures in blue, blue-black, black *ballpoint pen ink* and *sign pen ink* (Assignment of Sale Certificate No. 1054 dated June 7, 1920); Exh. XXV-M,[236] showing the aniline (violet) stamp pad ink entries that are clear and distinct with handwritten entries and signatures in black *ballpoint pen ink, sign pen ink* (Assignment of Sale Certificate No. 1054 dated June 7, 1920); Exh. XXV-P,[237] showing the adhesive tape used to hold tears or cuts, uneven brown discoloration (Assignment of Sale Certificate No. 1054 dated May 4, 1923); Exh. XXV-Q,[238] showing the sharply cut line along letter/s and a distinct scratch/tear along the loop of the signature (Assignment of Sale Certificate No. 1054 dated May 4, 1923); Exh. XXV-X,[239] showing close-up portions of Assignment of Sale Certificate No. 511 dated June 24, 1939; Exh. XXV-Y,[240] standard brown even discoloration of Assignment of Sale Certificate No. 511 dated June 24, 1939;

[231] *Id.* at 4795.

[232] *Id.* at 4796.

[233] *Id.* at 4797.

[234] *Id.* at 4798.

[235] *Id.* at 4801.

[236] *Id.* at 4802.

[237] *Id.* at 4805.

[238] *Id.* at 4806.

[239] *Id.* at 4813.

[240] *Id.* at 4814.

Exh. XXV-Z,[241] standard brown even discoloration of Assignment of Sale Certificate No. 511 dated June 24, 1939; Exh. XXV-AA,[242] water mark on Assignment of Sale Certificate No. 511 dated June 24, 1939; and Exh. XXV-BB,[243] water mark on Assignment of Sale Certificate No. 511 dated June 24, 1939.

On the particular findings in her report,[244] the witness testified that "printed entries on all the documents showed similarities but differ in font size." The font size would indicate if there were insertions or corrections that have been made on the typewritten entries on the document. Next, the typescript entries are clear/distinct/uniform especially on specimens 5 (Sale Certificate No. 651 dated January 8, 1913) and 6 (Assignment of Sale Certificate No. 651 dated April 19, 1930), which indicates that both documents could have been done at the same time. Finding No. 3 states that "Folds on specimens 1 to 4 are irregular and inconsistent while on specimen 5 and 6 folds across show whiteness in color indicating that they are recent." The irregular folds on the first four (4) documents would indicate that these documents could not be that old. Finding No. 5 states that "Adhesive tapes used to hold tear/s or cut/s are placed on areas even without apparent tear but only a fold or a crease," from which it can be concluded that the tape was just placed over to show that the document is old, even if it is not so. Finding No. 6 refers to "punch holes and staple wire marks are clean and firm which could be attributed to its being recent," which are found in Exhs. XXV-C, XXV-H, XXV-U, XXV-T, XXV-S and XXV-R. If the documents were bound by staple wires, they could have aged and there should already be iron residue that adhered to the paper. On Finding No. 7, it states that "Aniline (violet) stamp pad ink entries are clear/distinct with handwritten entries in Blue/ Blue-Black BALLPOINT PEN INK and SIGN PEN INK. Age of BALLPOINT PEN INK could not be determined." The witness pointed out that ball point pen inks were commercially

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[241] *Id.* at 4815.

[242] *Id.* at 4816.

[243] *Id.* at 4817.

[244] CA *rollo,* Vol. IV, p. 1062.

manufactured after World War II, around 1945. In 1919, 1920, 1923 and 1930, there were no ball point pens yet at the time. This fact indicates the documents could have been executed after 1945. Finding No. 8 states that "The notarial dry seal of the notary public is clear and firm on specimen 2, 5 and 6," which pertains to Assignment of Sale Certificate No. 1054 dated March 11, 1919, Sale Certificate No. 651 in the name of Ambrosio Berones and Assignment of Sale Certificate No. 651. Under Finding No. 9, it was observed that "[T]he browning and discoloration of the documents are uneven and whitening are very prominent even on its sides/areas which are supposedly exposed during storage." This is notably shown on the close-up photo of Exh. XXV-C wherein the edge, the uppermost edge of the document is very very white and clear, and even on the tear that was allegedly torn because of age, it is even clearer than in the inner portion of the document. Uneven discoloration from the edges to the center of the document would indicate that they are not as old as they purport to be; hence they are spurious. Finding No. 10 refers to specimen 2 (Assignment of Sale Certificate No. 1054 dated March 11, 1919) and specimen 3 (Assignment of Sale Certificate No. 1054 dated June 7, 1920) – "A signature of an assignor/assignee on specimen number 2 showed a sharply cut line along the letter/s and distinct 'scratch/ tear' appear along the loop of the signature of one (1) witness on specimen 3 with an adhesive attached to make it firm." The witness noted there are cuts along the line of the ink entries of the signature (Exhs. XXV-I, XXV-J), which are mechanical in nature; a sharp instrument was used to cut a portion of the ink in the signature, to make an impression that the document has aged already. Finding No. 11 states that "[I]nsect bites/tears are superficial in nature especially on specimen 5 (Sale Certificate No. 651 in the name of Ambrosio Berones) and 6 (Assignment of Sale Certificate No. 651 dated April 19, 1930). The witness explained that as paper ages, even in storages, its edges would have insects or mites, insect bites or cuts; in this case, those appear to have been artificially placed on the edges. Finally, on Finding No. 12, it was noted that "[A]ttached/adhering torn sheet/s at the center/topmost portion/back of specimen 2 and on the upper left hand corner of specimen 3 are lighter in color

than the document itself." Again, an indication that the documents are not as old as they purport to be and therefore spurious.[245]

In contrast, the standard document (Assignment of Sale Certificate No. 511 dated June 24, 1939) was found to have "showed natural aging and discoloration of paper"; it also exhibited a "water mark which is distinct under transmitted light"; "the adhesive tapes were attached along creases and tears"; and "the paper did not exhibit the characteristics which were observed on the questioned documents." The witness thus concluded that Exh. XXV-V and XXV-W is authentic and as old as the date indicated therein. The witness denied having been influenced by anybody in arriving at these findings.[246]

On cross-examination, Ms. Viloria-Magsipoc admitted that while she had attended a training course for questioned documents, she has not done any work under the Questioned Documents Division. This case was assigned to her by the Chief of the Forensic Chemistry Division and it took her about thirty (30) working days to finish the work. Regarding handwritten entries in ballpoint pen ink, she had read an article in the New Encyclopedia Britannica stating that ballpoint pens came in the late 19th century, and that commercial models appeared in 1895. There is no known method in chemistry to determine the age of ballpen writing. Paper chromatography and thin layer chromatography methods were used only in determining whether the ink was ballpen ink, fountain pen, sign pen and other ink entries. The LMB chose specimen No. 7 (Assignment of Sale Certificate No. 511 dated June 24, 1939) as the reference standard, while specimens 1 to 6 are the questioned documents. She did a comparative analysis of papers and went to the National Library to look at documents which are 5 to 10 years prior to a particular date and 5 to 10 years after said date.[247]

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[245] TSN, November 20, 2009 a.m., pp. 51-89 (CA *rollo*, Vol. XII, pp. 8135-8173).

[246] *Id.* at 89-92 (*Id.* at 8173-8176).

[247] TSN, November 25, 2009 p.m., pp. 6-9, 14-19, 33-39, 57-59, 62-69, 91-96 (CA *rollo*, Vol. XIII, pp. 8992-8995, 9000-9005, 9019-9025, 9043-9045, 9048-9055, 9077-9082).

The witness declared that when she went to the National Archives, she did not see a copy of the following documents: Sale Certificate No. 1054; Assignment of Sale Certificate No. 1054 dated March 11, 1919; Assignment of Sale Certificate No. 1054 dated June 7, 1920; Assignment of Sale Certificate No. 1054 dated May 4, 1923; Sale Certificate No. 651 in the name of Ambrosio Berones; and Assignment of Sale Certificate No. 651 dated April 19, 1930. Chromatologic analysis was used in this case to determine whether the entries in the questioned documents were written in ballpoint pen ink. She opined that it was possible that tears and creases along the edges of the subject documents are mechanical in nature. As to punch holes and staple wires, these are used to determine the characteristic of paper so that if the marks and holes are clean and clear, they were made recently, regardless of whether the paper is old or new. The marks of staple wire or puncher on a recent document are different from those on an old document. A recently stapled or punched paper has a "very, very firm" impression while an old document would have some tear or a reaction of the mechanical impression, or the hair fiber would be flaky already because of the brittleness of the paper. However, the preservation of paper may be affected by storage conditions and a very old paper can be well-preserved, such that even if created in 1911, it could survive without any insect bites. As to the quality of the impression made by dry seals, it depends on the quality of the seals, the force exerted on the seal lever when the seal is being pressed on paper, and the quality of the paper itself. The discoloration of documents is caused by the reaction of paper to air, as well as to dust and exposure to strong light. It is possible that the torn portions of the document, which were lighter in color than the document itself, were separated or folded in such a way that they were less exposed than the rest of the documents before they were re-attached. Specimen No. 7 does not bear any stamp mark of the LMB-RMD.[248]

On redirect examination, Ms. Viloria-Magsipoc pointed out that ball point pens were commercially used in the Philippines

[248] *Id.* at 91-95, 103-107, 110-131, 135, 142-151 (*Id.* at 9077-9081, 9089-9093, 9096-9117, 9121, 9128-9138).

in 1953; sign pens came later in the early 60s. She had used paper and thin layer chromatography of the questioned documents in determining the ink entries. Ink strokes are taken from the handwritten entries and they are spotted on a chromatographic plate both in paper and thin layer of silica gel. It is allowed to be diluted to a solvent system and the results would be a chromatogram that would indicate what dyes or what kind of ink is on the ink stroke that is being analyzed. After the chemical examination, she found that the handwritten entries in the questioned documents were all in ballpoint pen ink and sign pen ink. Ballpoint pens and sign pens were not yet commercially used at the time the documents were supposedly executed. She affirmed the findings contained in her Chemistry Report No. C-99-152 (Exh. XXV) and also her conclusion that the questioned documents were not as old as they purport to be. No water marks were found on the documents presented by the Manotoks which she had examined.[249]

Responding to clarificatory questions from the court, the witness declared that water marks on documents would indicate the possible manufacturing date of the paper. Water mark that is on the manufacturer of the paper is different from the water mark being placed on those government paper for official use only. In determining the possible age of the paper, she had used both physical and chemical examination. Because of their characteristics, she was able to conclude that the questioned documents are of recent paper and they could not have possibly been executed on the dates indicated. As to carbon dating, the witness declared that the NBI does not have carbon dating. Recent document means 10 years or less. As to type of paper, she said that bond paper was used in the questioned documents; she does not know the exact date when bond paper was introduced in the Philippines.[250]

As sur-rebuttal evidence, the Manahans presented the affidavit/deposition of Rosendo Manahan, Atty. Richie Q. Caranto, Jacinto Ramos de Guzman and Felix S. Javier.

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[249] *Id.* at 153-154, 177-187 (*Id.* at 9139-9140, 9163-9173).

[250] *Id.* at 194-212 (*Id.* at 9180-9198).

Rosendo Manahan in his Judicial Affidavit dated January 5, 2010, declared that the statement made by Milagros Manotok-Dormido in her Rebuttal Judicial Affidavit that Valentin Manahan could not have caused the survey of Lot 823 in 1938 and executed the Deed of Assignment of Sale Certificate No. 511 in favor of Hilaria de Guzman on June 24, 1939 because Valentin Manahan died on September 21, 1931 is *not correct.* He asserted that Valentin Manahan died on February 5, 1955 as shown by the Certification dated December 11, 2009 issued by the Office of the Civil Registrar of Malolos City, Bulacan (Exh. XLIV[251]). On the certificates of death submitted by Milagros Manotok-Dormido, he explained that the Valentin Manahan mentioned in those documents is not the same Valentin Manahan who was his grandfather, but just a namesake. His grandfather Valentin Manahan was born on May 21, 1890 whose parents were Luis Manahan and Rita Giron. These facts are shown by the certified *Partida de Bautismo* issued by Rev. Fr. Arsenio C. Reyes, Parish Priest of the Barasoain Parish dated June 24, 1949 (Exh. XLV).[252] Valentin Manahan's residence at the time he died was Bulihan, Malolos, Bulacan. He was married to Placida Figueroa as shown by the certified *Partida de Bautismo* of his son Lucio Manahan issued on November 5, 1945 by the Parish Priest of the Iglesia Catolica Apostolica Romana in Barasoain, Malolos, Bulacan (Exh. XLVI[253]). The Valentin Manahan subject of the Certificates of Death (Exhs. 61 and 102) was married to Francisca Lucas and was residing at Guinhawa, Malolos, Bulacan at the time of his death as shown in Manotoks' Exhs. 61/102.[254]

Rosendo Manahan said that he tried to get a certificate of death from the Parish of Our Lady of Mt. Carmel but half-page of pages 147 and 148, Book IV of their *Liber Defunctorum* in which the death of his grandfather is supposedly entered/recorded, were torn off and missing after Milagros Manotok-Dormido

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[251] CA *rollo,* Vol. XV, p. 10544.

[252] *Id.* at 10545.

[253] *Id.* at 10546.

[254] *Id.* at 10534-10535.

borrowed it. This was the information relayed to him by the custodian of the parish records, Felix Javier. Felix Javier told him he was surprised when Milagros, who borrowed the book as she wanted to photocopy some pages thereof, returned it with the half of pages 147 and 148 already missing. The missing pages cover deaths during the period January 26 to February 16, 1955, as evident in the remaining half-pages 147 and 148 (Exhs. XLVII, XLVII-A and XLVII-B[255]). He also went to the Roman Catholic Cemetery of Malolos City to look at the tombstone (*lapida*) of his grandfather Valentin Manahan and see the date of his death inscribed thereon. However, the tombstone was freshly vandalized; the date of his death and middle initial of his wife Placida Figueroa Manahan were chiselled off, which he had photographed (Exhs. XLII and XLIII[256]). It was Milagros Manotok-Dormido and her brother who went to Felix Javier, the parish records custodian, and Emilio V. Pangindian, Jr. the *sepulturero* of the Roman Catholic Cemetery of Malolos City and inquired about the tomb of the Manahan family. Emilio V. Pangindian, Jr. executed an Affidavit (Exh. XLVIII[257]) in support of this fact. As to the certificate of death (Exhs. 108 and 109) showing that he died on July 30, 1963 at age 20, he declared that it was a mistake since it was his brother Clodualdo de Guzman who died on July 30, 1963 at age 20 but his uncle, Jacinto de Guzman, erred in reporting the matter to the Local Civil Registrar as shown by his Affidavit (Exh. XLIX[258]). To prove that he is still alive, he submitted copies of his Philippine passport issued to him on December 12, 2006 (Exh. L[259]), US Visa issued to him on February 20, 2007 (Exh. LI[260]), BIR Tax Identification Card (Exh. LII[261]), Driver's License issued by

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[255] *Id.* at 10547-10549.

[256] CA *rollo,* Vol. XII, pp. 8639-8640.

[257] CA *rollo,* Vol. XV, p. 10550.

[258] *Id.* at 10551-10553.

[259] *Id.* at 10554.

[260] *Id.* at 10555.

[261] *Id.* at 10556.

the Land Transportation Office to expire on March 1, 2011 (Exh. LIII[262]), and Firearm License Card issued on April 2, 2009 by the PNP Firearm Explosives Unit (Exh. LIV[263]).[264]

Rosendo Manahan further declared that the claim of Milagros Manotok-Dormido that she was able to obtain a copy of Sale Certificate No. 1054 from the LMB is contradicted by the testimonies of former DENR Undersecretary Roseller dela Peña, Evelyn dela Rosa Celzo and Atty. Fe T. Tuanda. As to Deed of Conveyance No. 4562 (Exh. 44-Barques), it is a spurious document like Deed of Conveyance No. 4562 marked as Exh. 1 in the Barques' Pre-Trial Brief, for the simple reason that the documents have the same number but different dates and varying details issued by the Bureau of Lands for the same lot and in favor of the same party (Emiliano Setosta). Upon verification with LMB, said office replied to her wife that they do not have Exh. 44 on their files and that Deed of Conveyance No. 4562 was issued to Paulino Bigalbal on June 28, 1955 covering a 1.1396-hectare land identified as Lot No. 1540-N of the Naic Friar Land Estate (Exhs. LV and LVI[265]). He denied having commissioned Engr. Mariano V. Flotildes (rebuttal witness of the Barques) to conduct a relocation survey for him and his wife. Contrary to the assertions of Milagros Manotok-Dormido, his wife has not secured a tax declaration and title over Lot 823 nor filed a petition for reconstitution of title.[266]

Jacinto Ramos de Guzman identified Rosendo Manahan as his nephew during the taking of deposition and his Judicial Affidavit dated December 14, 2009 wherein he declared that Hilaria de Guzman who is now deceased, is his sister and the wife of Lucio Manahan who is also now deceased. His sister is not married to Jose Cruz. Rosendo Manahan who is still alive is the son of his sister Hilaria de Guzman and Lucio

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[262] *Id*.

[263] *Id*.

[264] *Id.* at 10534-10537.

[265] *Id.* at 10557-10558.

[266] *Id.* at 10538-10542.

Manahan. The children of his sister other than Maria are, namely: Clodualdo, Flaviana and Leonarda (all deceased). Rosendo Manahan is married to Felicitas B. Manahan. He explained the mistake in the Certificate of Death (Exh 56- Manotoks) saying he was dizzy for lack of sleep attending to the wake of Clodualdo and he was confused about the names of his nephews that he committed an honest mistake in reporting that Rosendo de Guzman died on July 30, 1963 instead of Clodualdo.[267] On cross-examination, he said that Clodualdo had been ill for more or less one (1) year (tuberculosis) and he took care of him before his death. Clodualdo was buried the following day after his death.[268]

Atty. Richie Q. Caranto, in his Judicial Affidavit declared that at about 2:15 in the afternoon of December 10, 2009, he stepped out of the hearing room to call their office messenger. A few minutes later, Atty. Roberto San Juan, counsel of the Manotoks, came out and the latter did not notice him because his view was blocked by the Court Security. He then overheard Atty. San Juan who called a person whose name sounded like "Din." Atty. San Juan and the person he called talked about documents; Atty. San Juan told "Din" that the findings should be that the writings in the documents were written in fountain pen ink and not ballpoint pen ink. Atty. San Juan told "Din" not to make a categorical statement in the report but just state therein that ballpoint pen was already existing for commercial use as early as 1895. When Atty. San Juan saw him, he noticed that he toned down his voice and told "Din" to state his findings and recommendations in the report. He was five (5) meters away from Atty. San Juan during the incident and thereafter, he went inside the hearing room and relayed what he heard to Solicitor Omar Diaz who was sitting in the last row near the door.[269]

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[267] CA *rollo*, Vol. XII, pp. 8458-8463; CA *rollo*, Vol. XV, pp. 10552-10553.

[268] *Id.* at 8464-8465.

[269] *Id.* at 8380-8382.

Felix S. Javier, undersecretary of Parish of Our Lady of Mt. Carmel residing at Barasoain Church, Malolos, Bulacan, identified Milagros Manotok-Dormido during the taking of the deposition. He also identified two (2) pictures shown to him by Mr. Manahan taken of the tombstone that was vandalized (Exhs. XLII and XLIII). He admitted that he has no knowledge as to whether it is the same Valentin who died in 1931; that is recorded in the books of the parish.[270]

Other documents formally offered by the Manahans are the following: Exh. I – Certified copy of the Petition dated November 25, 1998 for the cancellation of Manotoks' TCT No. RT-22481 (372302) filed by Felicitas B. Manahan with the OSG;[271] Exh. II – Certified photocopy of the letter dated December 3, 1998 of Cecilio O. Estoesta, Assistant Solicitor General, to the Director of LMB referring the petition filed by Felicitas Manahan for investigation, report and recommendation;[272] Exh. V - Letter dated January 21, 2005 of Concordia D. Zuñiga, Director, LMB to LRA Deputy Administrator Ofelia E. Abueg-Sta. Maria attesting to the authenticity of Deed of Conveyance No. V-200022 covering Lot 823 issued in favor of Felicitas Manahan on October 30, 2000, and further stating that "[t]he subject deed of conveyance does not contain the signature of then DENR Secretary Antonio Cerilles, because during the incumbency of Director Ernesto Adobo, Jr., the Director of Lands was the one (1) approving the issuance of deed of conveyance over friar lands pursuant to General Memorandum Order No. 1, series of 1977";[273] Exh. IX – Certified photocopy of the original of Real Property Tax Bill Receipt No. G-No. 712650 issued to Felicitas Manahan in 1989 by the Office of the Treasurer of Quezon City for payment of property tax covering Lot 823 for the year 1990-1991;[274] Exh. XII – Certified photocopy of letter-reply dated November 16, 1998 of Director Manuel D.

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[270] *Id.* at 8467-8477.

[271] CA *rollo*, Vol. IV, pp. 991-995.

[272] *Id.* at 996.

[273] *Id.* at 999.

[274] *Id.* at 1003.

Gerochi, LMB, to Felicitas Manahan stating that per verification of their records, Lot 823 of Piedad Estate is not available in their file but which verification "must not be construed as a confirmation that the said lot is still vacant or open for disposition/ sale to any person as title thereto might have already been obtained" and further advising that "a verification be made to the DENR-CENR Office and to the Register of Deeds concerned to avoid any confusion as to the present status of the said lot";[275] Exh. XIII – Certified copy of 1st Indorsement dated February 23, 1999 from Mamerto L. Infante, Regional Technical Director, Lands Sector, DENR-NCR forwarding to the LMB Director "the only available records in our office of Lot 823, Fls-3164, Piedad Estate";[276] Exh. XIV – Certified photocopy of the 2nd Indorsement dated March 26, 1999 from Mamerto L. Infante, Regional Technical Director, Lands Sector, DENR-NCR to the Director of LMB transmitting additional documents in connection with the investigation by Engr. Evelyn Celzo of Lot 823, Piedad Estate;[277] Exh. XX – Certified photocopy of the letter dated December 13, 2000 of Ernesto D. Adobo, Jr., OIC-Director, LMB to the Register of Deeds of Quezon City, forwarding Deed of Conveyance No. V-200022 in the name of Felicitas Manahan for registration and issuance of certificate of title to Felicitas Manahan covering Lot 823 of Piedad Estate;[278] Exh. XXII – Certified true copy of truncated TCT No. 22813 issued by the Register of Deeds, Province of Rizal with notation "Cancelled See TCT No. 634";[279] Exh. XXIII – Certified true copy of TCT No. 634 dated September 17, 1946 which is offered to prove that TCT No. 634 is in the name of Enrique Miguel, married to Rosario Tech and covers a land in Pasig with an area of 428 square meters[280]; Exh. XXIV - Original of Certification dated January 10, 2000 issued by Atty. Roberto B. Salcedo,

[275] *Id.* at 1007.

[276] *Id.* at 1008.

[277] *Id.* at 1013-1017.

[278] *Id.* at 1048.

[279] *Id.* at 1059.

[280] *Id.* at 1060.

Deputy Register of Deeds of Rizal stating that "after a thorough verification from the files of this office, it appears that the document/s leading to the issuance of TCT No. 22813, Book T-92 (Pre-War Title) *can no longer be found from the files of this office as of this date*";[281] Exh. XXX – photocopy of 1st Indorsement dated August 23, 2006 of Marco A. Castro, Acting Chief, LRA Land Projection Section referring to the Chief, Legal Division, LRA, Deed of Conveyance No. V-200022 of Felicitas Manahan and TCT No. 210177, and stating that the deed of conveyance is covered by Consulta No. 2282, and that "when said Deed of Conveyance was plotted in our Municipal Index Map thru its tie line, was found to be previously plotted under TCT No. 372302, while TCT No. 210177 when plotted thru its tie line falls outside Quezon City";[282] Exh. XXXII - photocopy of the Bureau of Lands' transmittal of Survey Records (decentralizing of records) showing that Accession No. 410436 which the Barques claimed as the accession number of their Fls-3168-D is in the name of Nicolas Apo, *et al.*;[283] Exh. XXXIII – Original of the letter dated October 3, 2005 of DENR-NCR OIC Regional Technical Director, Land Management Services informing that copy of *approved* Fls-3168-D is not on file in the Technical Records Section, Land Management Services, DENR-NCR, and what is on file is only a *photocopy* of Plan Fls-3168-D covering Lot 823 of the Piedad Estate which is not a duly certified one (1);[284] Exh. XXXV – Letter dated July 4, 2009 of Ignacio R. Almira, Jr., Chief, Regional Surveys Division stating that the Certifications dated June 8, 2009 and April 13, 2009 stating that DENR-NCR has available record of Deed of Conveyance Record No. 4562 and Sale Certificate No. V-321 and no available record of Sale Certificate No. 511 in the name of Valentin Manahan (assignor) and Hilaria de Guzman (assignee) were *not* issued by the LMB and the signatures appearing thereon

[281] *Id.* at 1061.

[282] *Id.* at 1071.

[283] *Id.* at 1073.

[284] *Id.* at 1074.

are not the signatures of Ignacio R. Almira, Jr.;[285] Exh. XXXVI – Letter dated June 22, 2009 of Engr. Fernando R. Verbo, OIC-Chief, Geodetic Survey Division, LMB, to Atty. Manuel Abrogar, stating that Fls-3168-D is not listed in the EDP listing;[286] and Exh. XXXVII - Photocopy of Sale Certificate No. 511 dated June 24, 1913 offered as secondary evidence to prove that Valentin Manahan was issued Sale Certificate No. 511 covering Lot 823 of the Piedad Estate on June 24, 1913.[287]

CA Findings

Examining the entire evidence on record, the CA found that none of the parties were able to prove a valid alienation of Lot 823 of Piedad Estate from the government in accordance with the provisions of Act No. 1120 otherwise known as the "Friar Lands Act". Notably lacking in the deed of conveyance of the Manotoks is the approval of the Secretary of Agriculture and Commerce as required by Section 18 of the said law. Upon close scrutiny, the factual allegations and voluminous documentary exhibits relating to the purchase of Lot 823 by the predecessors-in-interest of the claimants revealed badges of fraud and irregularity.

Manotoks' Claim

In our Resolution promulgated on December 18, 2008, the Court already made initial observations when we re-evaluated the points raised against the Manotok title and found these to be serious enough, thus*:*

> ...The apparent flaws in the Manotoks' claim are considerable and disturbing enough. The Court, as the ultimate citadel of justice and legitimacy, is a guardian of the integrity of the land registration system of the Philippines. We will be derelict in our duty if we remain silent on the apparent defects of the Manotok title, reflective as they are of a scourge this Court is dedicated to eliminate.
>
> Many of these flaws have especially emerged through the petition-for-intervention of Felicitas and Rosendo Manahan, whom we have

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[285] CA *rollo*, Vol. VIII, p. 4097.

[286] *Id.* at 4098.

[287] *Id.* at 4099.

allowed to intervene in these cases. The Manahans had filed a petition with the OSG seeking that it initiate cancellation/reversion proceedings against the Manotok title. That petition was referred by the OSG to the LMB of the DENR, which duly investigated the claim of the Manahans. The Chief of the Legal Division of the LMB recommended that the appropriate proceedings be taken in the proper court for the cancellation of the Manotok title, through a Memorandum dated 17 April 2000.

Around the same time, the LMB referred to the DENR Undersecretary for Legal Affairs Roseller S. dela Peña a query on whether a deed of conveyance could be issued to Felicitas Manahan. The DENR Undersecretary, in answering that query through a Memorandum dated 6 July 2000, pointed out that **the titles of the Manotoks could not have been derived from OCT No. 614, the mother title of Lot 823 of the Piedad Estate.** The chain of transfers leading from OCT No. 614 to the Manotok title was a TCT No. 22813, purportedly issued by the Office of the Register of Deeds for the Province of Rizal. **The copy of said TCT No. 22813 submitted to the Court is truncated in the upper half, to the point that it is not visually discernible what year the same was issued. More crucially, a certification was issued by the Register of Deeds of Rizal dated 7 January 2000 stating thus:**

> "After a thorough verification from the files of this Office, it appears that *the documents leading to the issuance of TCT No. 22813, Blk. T-92 cannot be found from the files of this Office."*

These findings were twice verified with due diligence and reconfirmed by the DENR, according to Undersecretary Dela Peña.

The DENR also requested the assistance of the National Bureau of Investigation (NBI) in conducting the said investigation. The NBI examined various sales certificates and assignment of sales certificates in the names of the purported predecessors-in-interest of the Manotoks Regina Geronimo, Modesto Zacarias, and Felicisimo Villanueva – certificates that were all dated prior to 1930. In its Chemistry Report No. C-99-152 dated 10 June 1999, the Forensic Chemistry Division of the NBI concluded that the said documents "could not be as old as it *(sic)* purports to be."

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Also on record is an Investigation Report on Lot No. 823 of the Piedad Estate dated 5 July 1989, authored by Evelyn C. dela Rosa, Land Investigator of the Community Environment and Natural Resources Office (CENRO), NCR-North Sector and addressed to the CENRO Officer, North CENRO. It was narrated therein that Lot No. 823 had actually been in the possession of a Valentin Manahan beginning in 1908. In 1939, Valentin Manahan applied for the purchase of the land, and he was issued Sales Certificate No. 511. The Investigation Report stated:

> "Records show that the Sale Certificate No. 511 covering Lot 823, Piedad Estate, was issued to Valentin Manahan as purchaser and transferred to Hilaria de Guzman Manahan as (Assignee) and sold to Felicitas Manahan by way of Deed of Absolute Sale dated August 23, 1974. *Based on my research at the Land Management Bureau (LMB), Central Office, it appears that original claimant of lot 823 was Valentin Manahan.*"

All told, these apparent problems with the Manotoks' claim dissuade us from being simply content in reflexively dismissing the administrative petition for reconstitution filed by the Barques. Indeed, we have to take further action.[288]

But since the Court recognized there was yet no sufficient evidence to warrant the annulment of the Manotok title, the case had to be remanded to the CA for further reception of evidence for the Manotoks, as well as the Barques and Manahans, to prove a valid acquisition from the Government of Lot No. 823.

Evaluating the documentary and testimonial evidence adduced by the Manotoks, the CA concluded that they still failed to establish a valid claim over Lot 823. It cited the finding of the NBI Forensic Chemistry Division that the result of the chemical analysis of the documents of Assignment of Sale Certificate No. 1054 dated March 11, 1919, June 7, 1920, May 4, 1923 and April 19, 1930 executed by the original claimants of Lot 823 in favor of Severino Manotok showed they were not really as old as they purport to be considering that (1) the handwritten entries were found to be made in ballpoint pen and sign pen inks, which were not yet commercially available in the

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[288] *Manotok IV v. Heirs of Homer L. Barque*, *supra* note 1, at 502-504.

Philippines until 1953 and 1965; and (2) the physical signs in the paper itself such as the uneven discoloration, artificial tears on the edges to make the document appear much older, and other tell-tale marks on the punch and staple wire holes. To contradict the findings of NBI Chemist Magsipoc, the Manotoks presented Dr. Sorra of the PNP Crime Laboratory who testified that she examined the questioned documents of the Manotoks and found them to be genuine and authentic. The CA, however, found Dr. Sorra's opinion of less probative value as it was based merely on the physical appearance of the questioned documents, and she did not subject these to chemical analysis or other more reliable procedures.[289]

The most fatal defect stressed by the CA in its Commissioners' Report is the lack of signature of the Chief of the Bureau of Public Lands (now Director of Lands) on Sale Certificate No. 1054 and approval by the Secretary of Interior/Agriculture and Commerce on the Manotoks' Sale Certificate No. 1054 and Deed of Conveyance No. 29204, as required under Act No. 1120. For being null and void *ab initio*, Sale Certificate No. 1054 cannot thus be the source of any legal right over Lot 823 and no valid transfer or assignment could have been made by the original claimants in favor of Severino Manotok. The CA found that the Manotoks' documentary evidence even showed a discrepancy since the Assignment of Sale Certificate No. 1054 marked as Exhs. 11, 12 and 13 showed a signature at the dorsal portion above the printed words "Director of Lands", but such signature is absent in the supposedly certified true copies obtained from the National Archives (Supplemental offer of Rebuttal Evidence, Exhs. 142, 143 and 144).[290] As to Manotoks' longtime possession evidenced by tax declarations, tax receipts and buildings constructed on the land as early as 1933, the CA considered these immaterial, the property being friar land which forms part of the State's patrimonial property.

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[289] CA Commissioners' Report, pp. 188-189.

[290] *Id.* at 186-188.

Barques' Claim

With the admission made by Teresita Barque-Hernandez that their Exh. 1[291] (certified true copy of Deed of Conveyance Record No. 4562 with Sale Certificate No. V-321) is a fake and spurious document, no legal right was acquired over Lot 823 by their predecessor-in-interest Emiliano Setosta who allegedly sold the lot to her father, Homer L. Barque. The CA noted that on its face, this document dated May 6, 1937 is spurious considering that while its heading indicated "Republic of the Philippines Department of Agriculture and Commerce" and the consideration for the conveyance in Japanese war notes, it is of judicial notice that the Republic of the Philippines was established only on July 4, 1946, and the identified owner of Piedad Estate should be "*Gobierno de las Islas Filipinas*" as stated in OCT No. 614. Moreover, Teresita J. Reyes, whose name appears in Exh. 1 as the officer who certified and verified the documents in the records of the LMB, denied that the signature appearing above her printed name was her signature.[292]

The Barques themselves realized their mistake in presenting Exh.1 and so they submitted another document, a photocopy of Deed of Conveyance No. 4562 dated January 25, 1938 (Exh. 44) with accompanying Certification dated 14 March 1997 (Exh. 43) of Amando V. Bangayan, Chief, LMB-RMD stating that the only available record on file with their office is the said Deed of Conveyance No. 4562 issued to Emiliano Setosta covering Lot 823 of Piedad Estate, Caloocan, Rizal.[293] The CA, however, gave scant weight to the aforesaid documents, particularly as the Deed of Conveyance No. 4562 lacks the approval of the Secretary of Agriculture and Commerce, thus:

...The veracity of the certification is seriously contradicted by the reply letter of Atty. Fe Tuanda (Exhibit LVI, Manahans) to the letter of Felicitas B. Manahan (Exhibit LV, Manahans). In her reply, Atty. Fe Tuanda, OIC, Records Management Division, LMB

[291] CA *rollo,* Vol. IV, p. 901.

[292] CA Commissioners' Report, pp. 193-194.

[293] CA *rollo,* Vol. IX, pp. 5419-5420.

categorically declared that "xxx please be informed that according to our verification, this Office has no record/copy of the alleged Deed of Conveyance No. 4562 purportedly issued in the name of EMILIANO P. SETOSTA supposedly covering a parcel of land identified as Lot No. 823, Piedad Estate, Quezon City." *Atty. Fe Tuanda further declared that "(F)urther verification of our records shows that the Deed of Conveyance No. V-4562 was issued on June 28, 1955 in favor of PAULINO BIGALBAL covering a parcel of land situated in Naic, Cavite identified as Lot No. 1540-N, Naic Friar Land Estate containing an area of 1.1396 hectares, and the same was transmitted to the Register of Deeds of Cavite on July 13, 1955."* In his Judicial Affidavit dated July 17, 2009, *former DENR Undersecretary Roseller de la Peña declared that Deed of Conveyance Record No. 4562 and Sales Certificate No. V-321 are not in the records of the LMB and DENR.* Also, DENR-NCR Land Investigator Evelyn G. Celzo, declared in her Judicial Affidavit dated July 15, 2009, that she made a thorough research in the files of the Central Office of the LMB but did not find Sales Certificate No. V-321 and a Deed of Conveyance in the name of Emiliano Setosta. With the foregoing evidence seriously controverting the veracity of Exhibit 43, the BARQUES should have presented Amando Bangayan as a witness in Court to confirm the veracity of her certification. The accuracy of the certification should be confirmed by Amando Bangayan on the witness stand wherein the other parties would be given the opportunity to cross-examine him on the veracity of his certification. Also, it must be pointed out that the attachment to Exhibit 43 marked and offered as Exhibit 44 is a mere photocopy of the so-called "DEED No. 4562" which has no probative value. The Barques has not accounted for the original copy for them to be allowed to present a photocopy as secondary evidence. Curiously, Exhibit 44 refers to a photocopy of "DEED NO. 4562" which also appeared as "Deed No. 4562" in the left upper portion of the spurious document pre-marked as Exhibit 1 for the Barques and offered as Exhibit XLI for the Manahans. At any rate, *even if Exhibit 44 will be considered as a secondary evidence, the same is null and void ab initio for the same lacks the approval of the Secretary of Agriculture and Commerce as explicitly required by law*….[294] (Italics supplied.)

Aside from the absence of a valid deed of conveyance and/or sale certificate in the name of the Barques' predecessor-in-

[294] CA Commissioners' Report, pp. 196-197.

interest, Emiliano Setosta, the basis for the issuance of TCT No. 210177 in the name of Homer L. Barque is further put seriously in doubt in view of the Barques' failure to prove the existence of Subdivision Plan Fls-3168-D duly authenticated by the Geodetic Surveys Division, LMB National Office. TCT No. 210177, purportedly a transfer from TCT No. 13900[295] — which title until now the Barques said they could no longer find a copy despite diligent search — is itself questionable, considering that TCT No. 13900 was not issued in the name of Emiliano Setosta but Manotok Realty, Inc.[296] We recall that the evidence of the Barques in support of their claim over Lot 823 was found by this Court to be "exceedingly weak", but which nonetheless was erroneously accorded credence by the First Division in its December 12, 2005 Decision. We quote from our Resolution dated December 18, 2008:

> The Barque title, or TCT No. 210177, under which the Barques assert title to Lot 823 of the Piedad Estate, states that it was transferred from TCT No. 13900. The Barques assert that they bought the subject property from a certain Setosta. Thus, it could be deduced that TCT No. 13900 should have been registered under the name of Setosta. However, it was not. *TCT No. 13900 was registered under the name of Manotok Realty, Inc.* This detracts from the Barques' claim that the Manotoks do not have title to the property, as in fact the Barque title was a transfer from a title registered under the name of the Manotoks. The Barques have failed to explain the anomaly.
>
> The Barques hinge their claim on a purported subdivision plan, FLS-3168-D, made in favor of Setosta. However, based on the records, it appears that there is a conflict as to its actual existence in the files of the government. Revelatory is the exchange of correspondence between the LMB and the LRA. The LMB did not have any copy of FLS-3168-D in the EDP listing, nor did the LMB have a record of the plan. However, a microfilm copy of FLS-3168-D was on file in the Technical Records and Statistical Section of the Department of Environment and Natural Resources – National Capital Region – (DENR-NCR). *The copy with the Technical Records and Statistical Section, which bore the stamp of the LMB, was denied by the LMB as having emanated from its office.*

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[295] Exh. 18-Barques, CA *rollo,* Vol. IV, p. 926.

[296] Exh. 6-Manotoks, CA *rollo,* Vol. VII, pp. 3086-3087.

Further, the letter dated 2 January 1997 from the LMB stated that the copy of FLS-3168-D as verified from its microfilm file was the same as the copy sent by the Technical Records and Statistics Section of the National Capital Region Lands Management Sector. *The LMB, however, denied issuing such letter and stated that it was a forged document.* To amplify the forged nature of the document, the LMB sent a detailed explanation to prove that it did not come from its office. In a letter to the administrator of the LRA, the hearing officer concluded that "it is evident that there is an attempt to mislead us into favorable action by submitting forged documents, hence it is recommended that this case [be] referred to the PARAC for investigation and filing of charges against perpetrators as envisioned by this office under your administration."

There are significant differences between the technical description of Lot 823 of the Piedad Estate as stated in FLS-3168-D, the subdivision plan relied on by the Barques, and the technical description provided by the DENR....

xxx xxx xxx

The Barques offered no credible explanation for the discrepancy... They also do not contradict the finding of the National Archives that *there is no copy in its files of the deed of sale allegedly executed between Setosta and Barque*.

Lastly, in the 1st Indorsement issued by the Land Projection Section of the LRA dated 23 August 2006, that Section stated that upon examination it was found out that *the land as described in the Barque title "when plotted thru its tie line falls outside Quezon City*." This is material, since Lot 823 of the Piedad Estate is within the boundaries of Quezon City. A similar finding was made by the Land Management Bureau (LMB). It attested that the line or directional azimuth of Lot No. 823 per the Barque title locates it at 5,889 meters away from point 1 of Lot No. 823 of the Piedad Estate.

These discrepancies highlight the error of the LRA and the Court of Appeals in acknowledging the right of the Barques to seek reconstitution of their purported Barque title. Even assuming that the petition for reconstitution should not have been dismissed due to the Manotok title, it is apparent that the Barques' claim of ownership is exceedingly weak.[297]

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[297] *Manotok IV v. Heirs of Homer L. Barque*, *supra* note 1, at 500-502.

The Barques' Exh. 6, Fls-3168-D dated June 21, 1940, contained a certification dated September 23, 1996 prepared by Romy A. Felipe that it is allegedly "the Microfilm enlargement of Fls-3168-D" with the signatures of Privadi J.G. Dalire and Carmelito Soriano.[298] However, Engr. Dalire, who served as Chief of the Geodetic Surveys Division of the LMB, DENR from 1988 to 1998, had earlier prepared a Report[299] and also executed an Affidavit dated November 18, 2006[300] setting forth the exchange of correspondence with the LRA relative to Fls-3168-D, and attesting that after having scrutinized all records while he was still Chief of the Geodetic Surveys Division, he found that no such Fls-3168-D exists. The pertinent portions of Engr. Dalire's affidavit stated:

xxx xxx xxx

Sometime in October 1996, when I was still Chief of the Geodetic Surveys Division of the LMB, I received a letter requesting a certified true copy of Subdivision Plan Fls-3168-D ("Fls-3168-D") in connection with the examination/verification of a petition for administrative reconstitution of TCT No. 210177 allegedly registered in the name of Homer L. Barque, Sr.

The letter came from Atty. Benjamin M. Bustos, who was then the Reconstituting Officer and Chief of the Reconstitution Division of the Land Registration Authority ("LRA").

A copy of Atty. Bustos's October 29, 2006 letter is attached as Annex A.

2. In my reply, I informed Atty. Bustos that the LMB has no record of Fls-3168-D.

A copy of my November 7, 1996 reply-letter is attached as Annex B.

Atty. Bustos later wrote me again, seeking clarification as to why the Land Management Services, DENR-National Capital

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[298] CA *rollo,* Vol. IV, p. 908.

[299] Exh. 49-Manotoks, CA *rollo,* Vol. VII, pp. 3437-3450.

[300] Exh. 50-Manotoks, *id.* at 3451-3487.

Region ("LMS-DENR-NCR") apparently had a microfilm copy of Fls-3168-D while the LMB does not have a record of the same.

Atty. Bustos' letter (dated December 2, 1996) is attached as Annex C.

I then wrote the Regional Technical Director of the LMS-DENR-NCR, stating that the LMB had no record of Fls-3168-D and requesting a copy of the alleged Fls-3168-D on file with the LMS-DENR-NCR for LMB's evaluation.

A copy of my letter (dated December 5, 1996) to the LMS-DENR-NCR is attached as Annex D.

3. LMS-DENR-NCR did not respond to my letter, Annex D, so I wrote them again on January 5, 1997 repeating my request for a copy of their alleged Fls-3168-D.

A copy of the letter dated January 5, 1997 is attached as Annex E.

4. On January 31, 1997, I wrote the LRA Administrator stating that despite repeated requests, LMS-DENR-NCR had not furnished the LMB a copy of Fls-3168-D which had been alleged to be in their files.

In the same letter, *I advised the LRA Administrator that, based on the LMB's examination of the machine copy of Fls-3168-D (which was attached to Atty. Bustos' letter of December 2, 1996), "it is certain that the source of the copy [of Fls-3168-D] is a spurious plan which may have been inserted in the file[s]."* I also stated that "until this writing, NCR [referring to LMS-DENR-NCR] has not sent to us the copy [of Fls-3168-D] for authentication as required by DENR Administrative Order." I likewise confirmed that the copy of Fls-3168-D, which I received from Atty. Bustos, did not emanate from the LMB for the following reasons:

"a. Our inventory of approved plans enrolled in our file, our Microfilm Computer list of plans available for decentralization all show that we do not have this plan Fls-3168-D, logically we cannot issue any copy.

b. *The copy of the plan Fls-3168-D shows visible signs that it is a spurious copy.*

1) The certification (rubber stamp) serves a two piece stamp. The certification and the signing official are separate.

Ours is one-piece.

2) The alignment of: Lands, GEODETIC, this, Privadi, and Chief in the syndicates (sic) stamp differ from our stamp. Chief, Geodetic Surveys Division is our stamp, their (sic) is Survey without the 's' plural.

3) We do not stamp the plan twice as the syndicate did on the copy.

4) The size of the lettering in the rubber stamp 'Not for Registration/Titling For Reference Only' is smaller than our stamp. It is also incomplete as an (sic) Stamp, in addition to the above is 'of _____'.

5) The copy bears forged initials of my section officer and myself. I sign completely certification.

6) The name of the claimant is very visible to have been tampered in the master copy.

7) Again, it is certified that this Bureau does not have copy of Fls-3168-D."

A copy of my letter dated January 31, 1997 is attached as Annex F.

5. On February 13, 1997, I received a letter from Atty. Bustos, requesting that I authenticate an enclosed letter dated January 2, 1997, purporting to have been written by me to him.

The January 2, 1997 "letter" states that LMS-DENR-NCR has forwarded a copy of Fls-3168-D to the LMB and that this copy is identical with that contained in the LMB's microfilm records.

Copies of Atty. Bustos' letter dated January 28, 1997 and my alleged letter of January 2, 1997 are attached as Annexes G and H, respectively.

I replied to Atty. Bustos, reiterating that Fls-3168-D does not exist in the files of LMB. I also stressed that the letter dated January 2, 1997, which I allegedly wrote, is a forged document. I stated that LMS-DENR-NCR had not forwarded any copy of Fls-3168-D to the LMB.

A copy of my letter (dated February 13, 1997) is attached as Annex I.

6. On February 19, 1997, I again wrote Atty. Bustos, reiterating that I did not prepare or issue the letter dated January 2, 1997. I also explained that the copy of Fls-3168-D, which was attached to Atty. Bustos' December 2, 1996 letter, did not emanate from the LMB for the following reasons:

"1) We have no copy of Fls-3168-D on file so how can we issue a copy of plan that is non-existing?

2) The copy of plan bears two 'Certifications' at the top and at lower half. This is not our practice;

3) The rubber-stamp shows there are two pieces; one for the certification and another for the signing official. We use one piece rubber stamp. The alignment of the letters/words of one rubber stamp is different from this marking on this spurious plan;

4) The plan shows only initial. I sign in full copies of plans with the initials of my action officers and their codings below my signature. These are not present in the spurious copy of plan;

5) The letter size of the rubber stamp 'NOT FOR REGISTRATION/TITLING, FOR REFERENCE ONLY' is smaller than our rubber stamp;

6) The spurious copy of plan you furnished us does not carry our rubber stamp 'GOVERNMENT PROPERTY NOT TO BE SOLD: FOR OFFICIAL USE ONLY OF _____' This is stamped on all microfilm copies we issue because all microfilm copies are for official use only of our LMS. We have shown you our rubber stamps to prove that the copy of Fls-3168-D in your possession is a spurious plan."

A copy of my February 19, 1997 letter to Atty. Bustos is attached as Annex J.

7. I hereby affirm under oath that I did not prepare, write, sign and/or send the January 2, 1997 letter to Atty. Bustos. The signature appearing in that letter is not my signature. I also confirm that the LMB did not, and until now does not, have any copy of Fls-3168-D, and that any representation purporting to produce a copy of it from the LMB files is false.

8. The LMB's Geodetic Surveys Division is the depositary of vital records containing information on survey plans. These records consist of, *inter alia*, (1) the Logbooks for Psu, Psd, Fls, and survey plans containing the survey number, the location, the surveyor, the condition of all plans salvaged after World War II; (2) the Locator Card prepared for each plan contained in the Logbooks (The Locator Card indicates the location of the land, the Survey Number and the Accession Number. The Accession Number stamped on the Locator Card is also stamped on the survey plan before microfilming so that authentic microfilm copies of plans should indicate an Accession Number); (3) the Microfilms of microfilmed survey plans; and (4) the EDP Listing of plans which were salvaged, inventoried, accession numbered and microfilmed (The EDP listing was made before the decentralization of the survey plans to the various offices of the LMS. Hence, *if a particular survey plan is not included in the EDP Listing, it simply means that no such plan was decentralized/ forwarded to the LMS.*)

9. All these records, which I have thoroughly scrutinized while I was Chief of the Geodetic Surveys Division, revealed that no such Fls-3168-D exists. The Logbook of Fls surveys, more specifically page 351 thereof (attached as Annex K), shows that the portion for Fls-3168-D was left blank. This simply means no Fls-3168-D was salvaged, inventoried and microfilmed by the LMB after World War II. Consequently, *no such Fls-3168-D could have been decentralized/ forwarded by the LMB to LMS-DENR-NCR and therefore, it is impossible for LMS-DENR-NCR to have a microfilmed copy thereof.* Moreover, the deck of Locator Cards does not contain a Locator Card pertaining to Fls-3168-D. Again, this shows that Fls-3168-D was not salvaged after World War II. It should be emphasized that the Locator Card indicates the Accession Number for a particular survey plan so that without the Locator Card, the roll of microfilm containing the survey plan cannot be located.

10. Previously, I prepared a report which discusses in greater detail why the LMB and the LMS-DENR-NCR did not have, and until now could not have, any genuine microfilm copy or any other genuine copy of Fls-3168-D. A copy of this report is attached as Annex L and forms an integral part of this affidavit. I hereby confirm the truthfulness of the contents of the report.

xxx xxx xxx[301]

[301] *Id.* at 3451-3455.

As pointed out by Engr. Dalire, the forwarding of the copy of Fls-3168-D to their office for validation is mandatory under DENR Administrative Order No. 49, series of 1991, and for the repeated failure of LMS-DENR-NCR to comply with the request of Engr. Dalire to forward to the Geodetic Surveys Division their purported copy of Fls-3168-D, the inescapable conclusion is that said plan is spurious and void.[302]

To cure this anomaly, the Barques presented before the CA another purported copy of Fls-3168-D containing an alleged certification of more recent date (Exhs. 3 and 4[303]). But still, the CA found no probative value in their additional evidence, further noting that the Barques, since their filing of a petition for administrative reconstitution on October 22, 1996, have failed to submit an authenticated and validated copy of Fls-3168-D.

Also, in a desperate attempt to cure the absence of a certified true copy of Subdivision Plan Fls-3168-D validated by the Chief of the Geodetic Surveys Division, the BARQUES offered as their Exhibits 3 and 4 an alleged copy of Subdivision Plan Fls-3168-D covering Lot 823 of the Piedad Estate, allegedly surveyed on June 21, 1940 by Deputy Public Land Surveyor Tomas Colmenar and approved on January 30, 1941 by the Director of Lands Jose P. Dans, purportedly authenticated on June 8, 2009 by Ignacio G. Almira, Chief, Regional Surveys Division. *A visual comparison of Exhibits 3 and 4 will readily show that both are reproduction of the same Subdivision Plan.* Although, it appears to be an exact reproduction of the same Subdivision Plan, nonetheless, it is perplexing to note the existence of different notations on the same Subdivision Plan.

In Exhibit 4, below the stamp "FOR OFFICIAL USE", marked as Exhibit 4-A, is the date June 8, 2009 and the "VALIDATION DENR A.O. NO. 49. 1991" and above the signature over the same "Ignacio G. Almira" is the notation which reads:

"This print copy of FLS-3168-D is cross-checked with other records and the microfilm of the original and it is found the same."

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[302] *Id.* at 3474; CA Commissioners' Report, pp. 197, 200-204, citing the Separate Concurring Opinion of Associate Justice Antonio T. Carpio in *Manotok IV v. Heirs of Homer L. Barque*, *supra* note 1.

[303] CA *rollo,* Vol. IV, pp. 903-904.

Exhibit "3", on the other hand, below the stamp "FOR OFFICIAL USE", marked as Exhibit "3-A" is the "CERTIFICATION" which reads:

"This is to certify that this is a true and correct reproduction of plan Fls-3168-D(W P),

Claimant: Emiliano Setosta

Location: Caloocan City

Area/Nos.: 342945 sq.m.

Requested by: Castor Viernes

Address: 55 Quirino Hi Way Talipapa, Novaliches, Q. City

Purpose: Reference

Date issued: 10-13-98

O.R.# 6437394-A
(Sgd.)

Prepared by: Norma C. trs

(Sgd.)
MAMERTO L. INFANTE
OIC, Regional Technical Director"

Under it, marked as Exhibit 3-B. are the following notations, "AUTHENTICATE" June 8, 2009:

"Sir:

According to the verification of FLS-3168-D, situated in Caloocan City dated October 13, 1998. Has available record and files, to National Capital Region. Signing (*sic*) of Engr. Mamerto L. Infante

(Sgd.)
IGNACIO G. ALMIRA
Chief, Regional Surveys Division"

The mere existence of different notations on the same Subdivision Plan creates serious doubt on the existence and veracity of the said Subdivision Plan. On record, from the testimonies of Teresita Barque Hernandez and Engr. Castor Viernes, no explanation was offered in their Judicial Affidavits and when they testified in Court on the above divergent notations on the same Subdivision Plan. As such, *without*

an acceptable explanation, the only logical conclusion is that the different notations on the same Subdivision Plan was a result of tampering of documents. This is so because common experience will tell us that if one and the same document is reproduced several times, even a million times, it would still reflect or replicate the same notations. Certainly, the tampering of documents not only affect the probative value thereof, but also subject the malefactor to criminal liability.

xxx xxx xxx[304]

The CA observed that the Barques should have presented Mamerto L. Infante and Ignacio G. Almira to identify their signatures on Exhs. 3 and 4. Such failure on their part to present said witnesses, according to the appellate court, could be considered eloquent evidence of the absence of Fls-3168-D in the name of Emiliano Setosta duly approved by the Director of Lands and authenticated by the Chief of the Geodetic Surveys Division of the LMB. Lastly, the CA cited the following letter-reply dated 03 October 2005 of Samson G. De Leon, OIC Regional Technical Director, LMS-DENR-NCR addressed to Felicitas B. Manahan (Exh. XXXIII), categorically denying that a copy of approved plan Fls-3168-D exists in their files, thus:

This pertains to your letter dated 22 September 2005 requesting for a duly certified copy of the original approved plan Fls-3168-D which, as per letter dated 08 August 2005 of the Regional Technical Director for Land Management Services, Atty. Crizaldy M. Barcelo was verified to be on file in the Technical Records Section, Land Management Sector of the DENR-National Capital Region.

In connection thereto, may we inform you that, contrary to the claim of Atty. Crizaldy M. Barcelo in his letter of 08 August 2005, copy of approved plan Fls-3168-D is not on-file in Technical Records Section, Land Management Services, DENR-NCR. At present, what is on file is **ONLY a PHOTOCOPY of Plan Fls-3168-D covering Lot 823, Piedad Estate which is not a duly certified one.**

In addition, Lot 823, Piedad Estate is covered by approved plans Sp-00-000360 and Sp-00-000779 are likewise on-file in the Technical

[304] CA Commissioners' Report, pp. 206-208.

Records Section, Land Surveys Division, certified on 28 November 2000 by then Chief, Regional Surveys Division and on 04 June 2005 by then Regional Technical Director for Lands Management Services, NCR, Atty. Crizaldy M. Barcelo, respectively**. Further, verification revealed that there is no record of receipt of the original copy of plan Fls-3168-D.** In view thereof, we regret to inform you that your request cannot be granted.

xxx xxx xxx[305] (Emphasis supplied.)

The Barques' claim being anchored on a spurious, fake and non-existent sale certificate or deed of conveyance, the CA concluded that no valid transfer or assignment can be used by them as basis for the reconstitution of title over the subject lot. And in the absence of a duly approved subdivision plan, the Barques' title, TCT No. 210177, is also null and void.

Manahans' Claim

From the existing records in the DENR and LMB, it appears that the original claimant/applicant over Lot 823 of Piedad Estate was Valentin Manahan who supposedly had the lot surveyed on November 10, 1938, with the plan designated as Fls-3164 approved by the Director of Lands on December 13, 1939, and Sale Certificate No. 511 in the name of Valentin Manahan subsequently issued. However, the CA seriously doubted the existence of Sale Certificate No. 511, as well as the veracity of their claim of actual possession before armed men allegedly barred their caretakers from the premises in the 1950s, thus:

...There is no competent evidence showing that Felicitas Manahan and/or her predecessor-in-interest have ever been in actual possession of the subject lot. The Investigation Report of Land Investigator Evelyn de la Rosa (Evelyn G. Celzo) that Valentin Manahan, as a farmer, took possession of the subject lot in 1908 is not supported by credible evidence. Evelyn de la Rosa conducted the ocular inspection only on May 15, 1989 and her Investigation Report dated July 5, 1989 (Exhibit XV, Manahan) did not mention nor identify the person who allegedly gave her the above information when she conducted an ocular inspection of the subject lot. A closer

[305] CA *rollo,* Vol. IV, p. 1074.

examination of her Investigation Report narrating specific events in 1948 like the lingering illness of Lucio Manahan who died in 1955 and the alleged reports of caretakers of heavily armed men taking the subject lot by force are tell-tale evidence of a scripted report of Land Investigator Evelyn de la Rosa. Indubitably, the Investigation Report is dovetailed to portray actual possession of the predecessor-in-interest of Felicitas Manahan. It is no coincidence that the Investigation Report is practically a replica or summation of Felicitas Manahan's allegations embodied in her petition (Exhibit "1", Manahans, *Rollo*, pp. 991-995) for cancellation/ reversion of TCT No. RT-22481 in the name of Severino Manotok she filed before the OSG and forwarded to the LMB.

xxx xxx xxx

...the claim of actual possession in 1908 up to about 1948 when allegedly armed men forcibly wrested possession from the caretakers of Lucio Manahan is negated by the absence of tax declarations and receipts showing that the MANAHANS who claimed to be owners of the subject lot declared the subject lot for taxation and paid the real property tax during the said period. One who claim to be the owner of a parcel of land should declare it and pay the corresponding real property tax. Possession of a tax declaration and payment of real property tax will certainly bolster the claim of possession and ownership over a parcel of land. *No evidence was even formally offered by the MANAHANS showing that they declared the subject lot for taxation purposes in 1948.* The only documentary evidence offered by the MANAHANS is Real Property Tax Bill Receipt No. 712650 (Exhibit IX, Manahans) showing payment of real property tax only for the taxable year 1990-1991 in the sum of ₱102,319.22. On the other hand, Severino Manotok declared the subject lot for taxation, as shown in various tax declarations (Exhibits 26-A to 26-N, Manotoks), the earliest of which was dated July 28, 1933 per Tax Declaration No. 12265 (Exhibit 26, Manotoks) and paid the real property tax as evidenced by tax bill receipts (Exhibits 27 to 27-KKKKKKK, Manotoks). Thirdly, the Court entertains serious doubt on the existence of "Sale Certificate No. 511" allegedly issued to Valentin Manahan after paying the purchase price of ₱2,140.00 stated in the Investigation Report of Evelyn de la Rosa. Although, Sale Certificate No. 511 was mentioned as one of the documents attached to the Investigation Report, nonetheless, *no certified copy of Sale Certificate No. 511 issued to Valentin Manahan was*

presented and formally offered as evidence in Court. As a matter of fact, Sale Certificate No. 511 was not among the documents secured from the LMB and DENR by the OSG and formally offered as evidence in Court. Also, Rosendo Manahan declared in Court that he tried on several occasions, after reading the Investigation Report, to secure a certified true copy of Sale Certificate No. 511, but despite a thorough search for the said document, no original or certified true copy is on file in the records of the LMB and DENR (TSN, November 19, 2009, pp. 25-26). *Sans a copy of Sale Certificate No. 511 in the files of the LMB and DENR, it is quite perplexing to note where and how Hilaria de Guzman secured a photocopy of Sale Certificate No. 511 dated June 24, 1913* (Exhibit XXXVII, Manahans). No explanation was offered by Felicitas Manahan and Rosendo Manahan when they testified in Court. Therefore, We cannot accord probative value on the said photocopy of Sale Certificate No. 511 dated June 24, 1913 as secondary evidence for the simple reason that it is of questionable existence and of dubious origin.…[306] (Italics supplied.)

The CA thus assailed the adoption by Attys. Rogelio Mandar and Manuel Tacorda of the unsubstantiated findings of Evelyn dela Rosa regarding the claim of the Manahans in their Memorandum dated April 3, 2000[307] addressed to the Chief of the Legal Division Alberto R. Recalde, who in turn adopted the same unsupported findings in his Memorandum dated April 17, 2000[308] addressed to the LMB OIC-Director. On the basis of Memorandum dated July 6, 2000[309] issued by then DENR Undersecretary Roseller de la Peña, who also relied on the Investigation Report of Evelyn dela Rosa, LMB OIC-Director Ernesto Adobo, Jr. issued an Order dated October 16, 2000[310] for the issuance of Deed of Conveyance No. V-200022 dated October 30, 2000 in favor of Felicitas Manahan.[311]

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[306] CA Commissioners' Report, pp. 211, 215-216.

[307] Exh. XVI-Manahans, CA *rollo*, Vol. VIII, pp. 4083-4092.

[308] Exh. XVI-Manahans, CA *rollo*, Vol. IV, pp. 1023-1030.

[309] Exh. XVII-Manahans, *id.* at 1031-1035.

[310] Exh. XVIII-Manahans, *id.* at 1036-1037.

[311] CA Commissioners' Report, pp. 214-215.

As to the Deed of Conveyance No. V-200022 dated October 30, 2000, the CA held that its validity cannot be sustained considering that it lacked the approval of the Secretary of Agriculture and Natural Resources (now Secretary of Environment and Natural Resources) and was signed only by LMB OIC-Director Ernesto Adobo, Jr. In any event, according to the appellate court, Sale Certificate No. 511 in the name of Valentin Manahan would be considered stale at the time of issuance of Deed of Conveyance No. V-200022 as more than eighty six (86) years had passed from the execution of Assignment of Sale Certificate No. 511 dated June 24, 1939. Clearly, OIC-Director Ernesto Adobo, Jr. committed grave abuse of discretion in issuing said deed of conveyance.

As to DENR Memorandum Order No. 16-05 issued by then Secretary Michael T. Defensor, the CA ruled that the Manahans, just like the Manotoks, may not invoke it to cure the lack of approval by the Secretary of Agriculture and Commerce in their respective sale certificate/deed of conveyance, the same being inconsistent with Act No. 1120.

The Court's Ruling

The core issue presented is whether the absence of approval of the Secretary of the Interior/Agriculture and Natural Resources in Sale Certificate No. 1054 and Deed of Conveyance No. 29204 warrants the annulment of the Manotok title.

From the proceedings in the CA, it was established that while records of the DENR-LMB indicate the original claimant/applicant of Lot 823 as a certain Valentin Manahan, only the Manotoks were able to produce a sale certificate in the name of their predecessors-in-interest, certified by the LMB Records Management Division (Exh. 10). In addition, the Manotoks submitted photocopies of original documents entitled Assignment of Sale Certificate dated March 11, 1919, June 7, 1920 and May 4, 1923 (Exhs. 11, 12 and 13). On the other hand, only two (2) of these documents were submitted by the OSG certified as available in the files of LMB: Assignment of Sale Certificate dated March 11, 1919 and May 4, 1923 (Exhs. 33 and 34-OSG-LMB).

Sale Certificate No. 1054 dated March 10, 1919 (Exh. 10) was not signed by the Director of Lands nor approved by the Secretary of the Interior. Exhibits 33 and 34-OSG-LMB contained only the signature of the Director of Lands. The Manotoks belatedly secured from the National Archives a certified copy of Deed of Conveyance No. 29204 dated December 7, 1932 (Exh. 51-A) which likewise lacks the approval of the Secretary of Agriculture and Natural Resources as it was signed only by the Director of Lands.

Section 18 of Act No. 1120 provides:

> SECTION 18. No lease or sale made by Chief of the Bureau of Public Lands under the provisions of this Act shall be valid **until approved by the Secretary of the Interior.** (Emphasis supplied.)

It is clear from the foregoing provision that the sale of friar lands shall be valid only if approved by the Secretary of the Interior (later the Secretary of Agriculture and Commerce). In *Solid State Multi-Products Corporation v. Court of Appeals*,[312] this Court categorically declared that the approval by the Secretary of Agriculture and Commerce is indispensable for the validity of the sale of friar lands. This was reiterated in *Liao v. Court of Appeals*,[313] where *sales certificates* issued by the Director of Lands in 1913 were held to be void in the absence of approval by the Secretary of Agriculture and Natural Resources.

In their Memorandum, the Manotoks pointed out that their photocopy of the original Deed of Conveyance No. 29204 (Exh. 51-A), sourced from the National Archives, shows on the second page a poorly imprinted typewritten name over the words "Secretary of Agriculture and Natural Resources," which name is illegible, and above it an even more poorly imprinted impression of what may be a stamp of the Secretary's approval. Considering that the particular copy of said deed of conveyance on which the transfer certificate of title was issued by the Register of Deeds in the name of the buyer Severino Manotok is required

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[312] G.R. No. 83383, May 6, 1991, 196 SCRA 630, 640.

[313] G.R. Nos. 102961-62, 107625 and 108759, January 27, 2000, 323 SCRA 430, 442.

by law to be filed with and retained in the custody of the Register of Deeds in accordance with Sec. 56 of Act No. 496 and Sec. 56 of P.D. No. 1529, the Manotoks contend that "we can assume that the Manotok deed of conveyance was in fact approved by the Department Secretary because *the register of deeds did issue TCT No. 22813* in the name of the buyer Severino Manotok." It is also argued that since the Bureau of Lands was required by law to transmit the deed of conveyance *directly* to the Register of Deeds, said office is legally presumed to have observed the law's requirements for issuing that deed. The presumption of regularity therefore stands as uncontradicted proof, in this case, that "all...requirements for the issuance of" that deed of conveyance had been obeyed. In any event, the Manotoks assert that even if we were to ignore the presumption of validity in the performance of official duty, Department Memorandum Order No. 16-05 issued on October 27, 2005 by then DENR Secretary Michael T. Defensor, supplies the omission of approval by the Secretary of Agriculture and Natural Resources in deeds of conveyances over friar lands.

These arguments fail.

Applying the rule laid down in *Solid State Multi-Products Corporation v. Court of Appeals* and *Liao v. Court of Appeals*, we held in *Alonso v. Cebu Country Club, Inc.*,[314] that the absence of approval by the Secretary of Agriculture and Commerce in the sale certificate and assignment of sale certificate made the sale *null and void ab initio*. Necessarily, there can be no valid titles issued on the basis of such sale or assignment. The Manotoks' reliance on the presumption of regularity in the statutorily prescribed transmittal by the Bureau of Lands to the Register of Deeds of their deed of conveyance is untenable. In our Resolution[315] denying the motion for reconsideration filed by petitioners in *Alonso v. Cebu Country Club, Inc.*, we underscored the *mandatory* requirement in Section 18, as follows:

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[314] *Supra* note 3 at 404-405.

[315] G.R. No. 130876, December 5, 2003, 417 SCRA 115.

Section 18 of Act No. 1120 or the Friar Lands Act unequivocally provides: "No lease or sale made by the Chief of the Bureau of Public Lands (now the Director of Lands) under the provisions of this Act shall be valid until approved by the Secretary of the Interior (now, the Secretary of Natural Resources). Thus, petitioners' claim of ownership must fail in the absence of positive evidence showing the approval of the Secretary of Interior. **Approval of the Secretary of the Interior cannot simply be presumed or inferred from certain acts since the law is explicit in its mandate.** This is the settled rule as enunciated in *Solid State Multi-Products Corporation vs. Court of Appeals* and reiterated in *Liao vs. Court of Appeals*. Petitioners have not offered any cogent reason that would justify a deviation from this rule.

xxx xxx xxx[316]

DENR Memorandum Order No. 16,[317] invoked by both the Manotoks and the Manahans, states:

WHEREAS, it appears that there are uncertainties in the title of the land disposed of by the Government under Act 1120 or the Friar Lands Act due to the lack of the signature of the Secretary on the Deeds of Conveyance;

WHEREAS, said Deeds of Conveyance were only issued by the then Bureau of Lands (now the Land Management Bureau) after full payment had been made by the applicants thereon subject to the approval of the Secretary of the then Department of Interior, then Department of Agriculture and Natural Resources, and presently the Department of Environment and Natural Resources, in accordance with Act 1120;

WHEREAS, some of these Deeds of Conveyance on record in the field offices of the Department and the Land Management Bureau do not bear the signature of the Secretary despite full payment by the friar land applicant as can be gleaned in the Friar Lands Registry Book;

WHEREAS, it is only a ministerial duty on the part of the Secretary to sign the Deed of Conveyance once the applicant had already made full payment on the purchase price of the land;

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[316] *Id.* at 124.

[317] CA *rollo,* Vol. VII, p. 3365.

WHEREFORE, for and in consideration of the above premises, and in order to remove all clouds of doubt regarding the validity of these instruments, **it is hereby declared that all Deeds of Conveyance that do not bear the signature of the Secretary are deemed signed or otherwise ratified by this Memorandum Order**, provided, however, that full payment of the purchase price of the land and compliance with all the other requirements for the issuance of the Deed of Conveyance under Act 1120 have been accomplished by the applicant;

This Memorandum Order, however, does not modify, alter or otherwise affect any subsequent assignments, transfers and/or transactions made by the applicant or his successors-in-interest or any rights arising therefrom after the issuance of a Transfer Certificate of Title by the concerned Registry of Deeds.

The CA opined that the Manotoks cannot benefit from the above department issuance because it makes reference only to those deeds of conveyance on file with the records of the DENR field offices. The Manotoks' copy of the alleged Deed of Conveyance No. 29204 issued in 1932, was sourced from the National Archives. Apparently, for the Manotoks, Memorandum Order No. 16 provides the remedy for an inequitable situation where a deed of conveyance "unsigned" by the Department Secretary could defeat their right to the subject lot *after* having fully paid for it. They point out that the Friar Lands Act itself states that the Government ceases reservation of its title once the buyer had fully paid the price.

The first paragraph of Section 15 states:

SECTION 15. The Government hereby reserves the title to each and every parcel of land sold under the provisions of this Act **until the full payment of all installments or purchase money and interest by the purchaser has been made**, and any sale or encumbrance made by him shall be invalid as against the Government of the Philippine Islands and shall be in all respects subordinate to its prior claim.

x x x x (Emphasis supplied.)

Indeed, in the early case of *Director of Lands v. Rizal*,[318] this Court ruled that in the sale of friar lands under Act No. 1120, "the purchaser, even before the payment of the full price and before the execution of the final deed of conveyance is considered by the law as the actual owner of the lot purchased, under obligation to pay in full the purchase price, the role or position of the Government being that of a mere lien holder or mortgagee." Subsequently, in *Pugeda v. Trias*,[319] we declared that "the conveyance executed in favor of a buyer or purchaser, or the so-called **certificate of sale**, is a conveyance of the ownership of the property, subject only to the resolutory condition that the sale may be cancelled if the price agreed upon is not paid for in full.

In *Dela Torre v. Court of Appeals*,[320] we held:

> This is well-supported in jurisprudence, which has consistently held that under Act No. 1120**, the equitable and beneficial title to the land passes to the purchaser the moment the first installment is paid and a certificate of sale is issued.** Furthermore, when the purchaser finally pays the final installment on the purchase price and is given a deed of conveyance and a certificate of title, the title, at least in equity, retroacts to the time he first occupied the land, paid the first installment and was issued the corresponding certificate of sale.
>
> All told, **notwithstanding the failure of the government to issue the proper instrument of conveyance in favor of Mamerto or his heirs, the latter still acquired ownership over the subject land.**[321] (Emphasis supplied.)

Clearly, it is the execution of the contract to sell and delivery of the certificate of sale that vests title and ownership to the

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[318] 87 Phil. 806, 813 (1950).

[319] No. L-16925, March 31, 1962, 4 SCRA 849, 859.

[320] G.R. No. 113095, February 8, 2000, 325 SCRA 11.

[321] *Id.* at 18, citing *Republic v. Heirs of Felix Caballero*, G.R. No. L-27473, September 30, 1977, 79 SCRA 177, 188-189; *Fabian v. Fabian*, G.R. No. L-20449, January 29, 1968, 22 SCRA 231, 235; *Alvarez v. Espiritu*, G.R. No. L-18833, August 14, 1965, 14 SCRA 892, 897; and *Director of Lands v. Rizal*, *supra*.

purchaser of friar land.[322] Such certificate of sale must, of course, be signed by the Secretary of Agriculture and Natural Resources, as evident from Sections 11, 12 and the second paragraph of Section 15, in relation to Section 18, of Act No. 1120:

SECTION 11. Should any person who is the actual and bona fide settler upon, and occupant of, any portion of said lands at the time the same is conveyed to the Government of the Philippine Islands desire to purchase the land so occupied by him, he shall be entitled to do so at the actual cost thereof to the Government, and shall be granted fifteen years from the date of the purchase in which to pay for the same in equal annual installments, should he so desire paying interest at the rate of four per centum per annum on all deferred payments.

…**The terms of purchase shall be agreed upon between the purchaser and the Director of Lands, subject to the approval of the Secretary of Agriculture and Natural Resources.**

SECTION 12. ...When the cost thereof shall have been thus ascertained, the Chief of the Bureau of Public Lands shall give the said settler and occupant **a certificate which shall set forth in detail that the Government has agreed to sell to such settler and occupant the amount of land so held by him, at the price so fixed, payable as provided in this Act**. . .and that upon the payment of the final installment together with all accrued interest the Government will convey to such settler and occupant the said land so held by him by proper instrument of conveyance, which shall be issued and become effective in the manner provided in section one hundred and twenty-two of the Land Registration Act….

SECTION 15. …

The right of possession and purchase **acquired by certificates of sale signed under the provisions hereof** by purchasers of friar lands, pending final payment and the issuance of title, shall be considered as personal property for the purposes of serving as security for mortgages, and shall be considered as such in judicial proceedings relative to such security. (Emphasis supplied.)

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[322] See *Jovellanos v. Court of Appeals*, G.R. No. 100728, June 18, 1992, 210 SCRA 126, 135.

In the light of the foregoing, we hold that the Manotoks could not have acquired ownership of the subject lot as they had no valid certificate of sale issued to them by the Government in the first place. Sale Certificate No. 1054 dated March 10, 1919 (Exh. 10) purportedly on file with the DENR-LMB, conspicuously lacks the signature of the Director of Lands and the Secretary of Agriculture and Natural Resources. In fact, Exh. 10 was not included among those official documents submitted by the OSG to the CA. We underscore anew that friar lands can be alienated only upon proper compliance with the requirements of Sections 11, 12 and 18 of Act No. 1120. It was thus primordial for the Manotoks to prove their acquisition of its title by clear and convincing evidence.[323] This they failed to do. Accordingly, this Court has no alternative but to declare the Manotok title null and void *ab initio*, and Lot 823 of the Piedad Estate as still part of the Government's patrimonial property, as recommended by the CA.

The decades-long occupation by the Manotoks of Lot 823, their payment of real property taxes and construction of buildings, are of no moment. It must be noted that the Manotoks miserably failed to prove the existence of the title allegedly issued in the name of Severino Manotok after the latter had paid in full the purchase price. The Manotoks did not offer any explanation as to why the only copy of TCT No. 22813 was torn in half and no record of documents leading to its issuance can be found in the registry of deeds. As to the certification issued by the Register of Deeds of Caloocan, it simply described the copy presented (Exh. 5-A) as "DILAPIDATED" without stating if the original copy of TCT No. 22813 actually existed in their records, nor any information on the year of issuance and name of registered owner. While TCT No. 22813 was mentioned in certain documents such as the deed of donation executed in 1946 by Severino Manotok in favor of his children and the first tax declaration (Exh. 26), these do not stand as secondary evidence of an alleged transfer from OCT No. 614. This hiatus in the evidence of the Manotoks further cast doubts on the veracity of their claim.

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[323] *Alonso v. Cebu Country Club, Inc., supra* note 315, at 126.

As we stressed in *Alonso*:

> Neither may the rewards of prescription be successfully invoked by respondent, as it is an iron-clad *dictum* that prescription can never lie against the Government. Since respondent failed to present the paper trail of the property's conversion to private property, the lengthy possession and occupation of the disputed land by respondent cannot be counted in its favor, as the subject property being a friar land, remained part of the patrimonial property of the Government. **Possession of patrimonial property of the Government, whether spanning decades or centuries, can not *ipso facto* ripen into ownership.** Moreover, the rule that statutes of limitation do not run against the State, unless therein expressly provided, is founded on the "the great principle of public policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided."[324] (Emphasis supplied.)

With respect to the claim of the Manahans, we concur with the finding of the CA that no copy of the alleged Sale Certificate No. 511can be found in the records of either the DENR-NCR, LMB or National Archives. Although the OSG submitted a certified copy of Assignment of Sale Certificate No. 511 allegedly executed by Valentin Manahan in favor of Hilaria de Guzman, there is no competent evidence to show that the claimant Valentin Manahan or his successors-in-interest actually occupied Lot 823, declared the land for tax purposes, or paid the taxes due thereon.

Even assuming *arguendo* the existence and validity of the alleged Sale Certificate No. 511 and Assignment of Sale Certificate No. 511 presented by the Manahans, the CA correctly observed that the claim had become stale after the lapse of eighty six (86) years from the date of its alleged issuance. As this Court held in *Liao v. Court of Appeals*, "the certificates of sale x x x became stale after ten (10) years from its issuance" and hence "can not be the source documents for issuance of title more than seventy (70) years later."[325]

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[324] *Id.* at 127.

[325] *Supra* note 313, at 442.

Considering that none of the parties has established a valid acquisition under the provisions of Act No. 1120, as amended, we therefore adopt the recommendation of the CA declaring the Manotok title as null and void *ab initio*, and Lot 823 of the Piedad Estate as still part of the patrimonial property of the Government.

WHEREFORE, the petitions filed by the Manotoks under Rule 45 of the 1997 Rules of Civil Procedure, as amended, as well as the petition-in-intervention of the Manahans, are *DENIED*. The petition for reconstitution of title filed by the Barques is likewise *DENIED*. TCT No. RT-22481 (372302) in the name of Severino Manotok IV, *et al.*, TCT No. 210177 in the name of Homer L. Barque and Deed of Conveyance No. V-200022 issued to Felicitas B. Manahan, are all hereby declared *NULL and VOID*. The Register of Deeds of Caloocan City and/or Quezon City are hereby ordered to CANCEL the said titles. The Court hereby *DECLARES* that Lot 823 of the Piedad Estate, Quezon City, legally belongs to the NATIONAL GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, without prejudice to the institution of REVERSION proceedings by the State through the Office of the Solicitor General.

With costs against the petitioners.

SO ORDERED.

Corona, C.J., Leonardo-de Castro, Peralta, Bersamin, Del Castillo, Abad, Perez, and *Mendoza, JJ.*, concur.

Carpio, J., see dissenting opinion.

Carpio Morales, J., see concurring and dissenting opinion.

Velasco, Jr. and *Brion, JJ.*, join the dissent of *J.* Carpio.

Sereno, J., dissents, and reserves her right to issue a separate opinion.

Nachura, J., no part.

CONCURRING AND DISSENTING OPINION

CARPIO MORALES, *J.*:

DENR Memorandum Order No. 16-05 of October 27, 2005 (Order 16-05) is significant in resolving the issue of validity of titles over *friar lands*. Its relevance cannot be ignored.

Previous pronouncements state that all lots in the Piedad Estate have been disposed of even before the Second World War.[1] In the present case, three sets of claimants over Lot 823 of the Piedad Estate submitted their respective evidence. After sifting through the evidence and rejecting spurious and stale documents, the *ponencia* finds that petitioners were able to produce 1) a sale certificate in the name of their predecessors-in-interest as certified by the Records Management Division of the Land Management Bureau, and 2) a deed of conveyance signed by the Director of Lands.

The **core issue**, as defined by the *ponencia*, is whether the absence of approval of the Secretary of the Interior/Agriculture and Natural Resources (Department Secretary) in petitioners' Sale Certificate No. 1054 *and* Deed of Conveyance No. 29204 issued in 1919 and 1932, respectively, warrants the annulment of their title.[2]

It does, says the *ponencia*.

It does not, I submit.

There is no absence of approval to speak of, since petitioners' Deed of Conveyance is, pursuant to Order 16-05, **deemed signed** by the Department Secretary, and there is **no legal basis for requiring another signature** of the Department Secretary on the Sale Certificate.

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[1] *Cañete v. Genuino Ice Company, Inc.*, G.R. No. 154080, January 22, 2008, 542 SCRA 206, 215 citing *Pinlac v. Court of Appeals*, 402 Phil. 684, 699-701 (2001) which cited the Comments and Recommendations of the Ad Hoc Committee created by the then Ministry of Natural Resources, as embodied in its Special Order No. 426, series of 1986.

[2] *Ponencia*, p. 87.

On the purportedly limited applicability of Order 16-05 to instruments "on file with the records of the DENR field offices," the *ponencia* concedes that it merely mentions in passing the appellate court's observation that the Deed of Conveyance was secured from the National Archives, and not from the DENR. Whether the source or remaining repository of the document is material for the applicability of Order 16-05, the *ponencia* does not clearly declare, as it briefly states:

> The CA opined that the Manotoks cannot benefit from the above department issuance [-Order 16-05] because it makes reference only to those deeds of conveyance on file with the records of the DENR field offices. The Manotoks' copy of the alleged Deed of Conveyance No. 29204 issued in 1932, was sourced from the National Archives. x x x[3] (underscoring supplied)

The *ponencia* thereafter digresses to the effect of a deed of conveyance "unsigned" by the Department Secretary. It does not uphold the appellate court's reasoning denying, on the basis of the source of the document, the applicability of Order 16-05, since it (the *ponencia*), by the *ponente's* admission, merely "underscored"[4] such observation. It does not, however, ascribe any legal consequence to it. Simply put, the confusion stems from the immediately-quoted two barren sentences of the *ponencia*.

An examination of Order 16-05 *vis-à-vis* the Friar Lands Act (Act No. 1120) enacted in 1904 is in order. Order 16-05 disposes:

> WHEREFORE, for and in consideration of the above premises, and in order to remove all clouds of doubt regarding the validity of these instruments, it is hereby declared that all Deeds of Conveyance that do *not* bear the signature of the Secretary are **deemed signed or otherwise ratified** by this Memorandum Order, *provided, however*, that full payment of the purchase price of the land and compliance with all the other requirements for the issuance of the Deed of Conveyance under Act No. 1120 have been accomplished by the applicant[.] (emphasis, italics and underscoring supplied)

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[3] *Id.* at 91.

[4] Reply (to Dissenting Opinion), p. 4.

Contrary to the *ponencia's* position, Order 16-05 does not contravene Act No. 1120. Order 16-05 did not dispense with the requirement of the Department Secretary's approval. It recognizes that the approval of the Secretary is still required, the grant or ratification of which is made subject only to certain conditions, precisely "to remove all clouds of doubt regarding the validity of these instruments" which do not bear his signature.[5] The fulfillment of the conditions must be proven to be extant in every case.

The grant of approval under Order 16-05 is premised on two conditions: (1) full payment of the purchase price of the land; and (2) compliance with all the other requirements for the issuance of the Deed of Conveyance. There is no dispute as to the manner of determining full payment of the purchase price. The variance lies in determining "compliance with all other requirements for the issuance of the Deed of Conveyance" under Act No. 1120.[6]

The *ponencia* maintains that one still needs to present a Sale Certificate that bears the signature of the Department Secretary, since Order 16-05 refers only to a Deed of Conveyance,[7] citing Section 15 of Act No. 1120 which reads:

> SECTION 15. The Government hereby reserves the title to each and every parcel of land sold under the provisions of this Act until full payment of all installments or purchase money and interest by the purchaser has been made, and any sale or encumbrance made by him shall be invalid as against the Government of the Philippine Islands and shall be in all respects subordinate to its prior claim.
>
> The right of possession and purchase acquired by certificates of sale **signed under the provisions hereof** by purchasers of friar lands, pending final payment and the issuance of title, shall be

[5] DENR Memorandum Order No. 16-05 (October 27, 2005).

[6] Section 12 of Act No. 1120 provides that upon the payment of the final installment together with all accrued interest the Government will convey to such settler and occupant the said land so held by him by proper instrument of conveyance, which shall be issued and become effective in the manner provided in Section 122 of the Land Registration Act.

[7] Reply (to Dissenting Opinion), pp. 2-3.

considered as personal property for the purposes of serving as security for mortgages and shall be considered as such in judicial proceedings relative to such security. (emphasis and underscoring supplied)

As to what provisions under Act No. 1120 require the signing by the Department Secretary of the Certificate of Sale, the *ponencia*[8] points to Section 11. But the "approval" mentioned in the second paragraph of Section 11 refers to sales contracted *prior* to the enactment in 1904 of Act No. 1120. Thus Section 11 reads:

SECTION 11. Should any person who is the actual and bona fide settler upon, and occupant of, any portion of said lands at the time the same is conveyed to the Government of the Philippine Islands desire to purchase the land so occupied by him, he shall be entitled to do so at the actual cost thereof to the Government, and shall be granted fifteen years from the date of the purchase in which to pay for the same in equal annual installments, should he so desire paying interest at the rate of four per centum per annum on all deferred payments.

And the contracts of sale **made *prior* to the approval of this Act** may be extended, in the discretion of the Director of Lands, for a period of not more than ten years from the date on which said contracts must expire under the provisions of Act Numbered Eleven hundred and twenty. The terms of purchase shall be agreed upon between the purchaser and the Director of Lands, **subject to the approval of the Secretary of Agriculture and Natural Resources**.

Both in case of lease and of sale of vacant lands under the provisions of section nine of this Act, the Director of Lands shall notify the municipal president or municipal presidents of the municipality or municipalities in which said lands lie of said lease or sale before the same takes place. Upon receipt of such notification by said municipal president or municipal presidents the latter shall publish the same for three consecutive days, by bandillos, in the poblacion and barrio or barrios affected, and shall certify all these acts to the Director of Lands who shall then, and not before, execute a lease or proceed to make the said sale with preference, other conditions being equal, to the purchaser who has been a tenant or bona fide occupant at any time of the said lands or part thereof, and if there

[8] *Ponencia*, pp. 92-93.

has been more than one occupant to the last tenant or occupant: Provided, however, That no lease or sale of vacant lands made in accordance with this section shall be valid nor of any effect without the requisite as to publication by bandillos, above provided: Provided, further, that the provisions of this paragraph shall not apply to leases or sales made to any provincial or municipal government or any subdivision, branch, or entity of the Government. (emphasis, italics and underscoring supplied)

The *ponencia*[9] also points to Section 12. But the signature referred to therein is that of the "settler" or "occupant," to be affixed on the delivery "receipt" (not on the Certificate of Sale), as confirmed by Section 13.

SECTION 12. It shall be the duty of the Chief of the Bureau of Public Lands by proper investigation to ascertain what is the actual value of the parcel of land held by each settler and occupant, taking into consideration the location and quality of each holding of land, and any other circumstances giving its value. The basis of valuation shall likewise be, so far as practicable, such that the aggregate of the values of all the holdings included in each particular tract shall be equal to the cost to the Government to the entire tract, including the cost of surveys, administration and interest upon the purchase money to the time of sale. When the cost thereof shall have been thus ascertained, the Chief of the Bureau of Public Lands shall give the said settler and occupant a certificate which shall set forth in detail that the Government has agreed to sell to such settler and occupant the amount of land so held by him, at the price so fixed, payable as provided in this Act at the office of the Chief of Bureau of Public Lands, in gold coin of the United States or its equivalent in Philippine currency, and that upon the payment of the final installment together with all accrued interest the Government will convey to such settler and occupant the said land so held by him by proper instrument of conveyance, which shall be issued and become effective in the manner provided in section one hundred and twenty-two of the Land Registration Act. The Chief of the Bureau of Public Lands shall, in each instance where a **certificate** is given to the settler and occupant of any holding, take his formal **receipt** showing the delivery of such certificate, **signed by said settler and occupant**.

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[9] *Id.*

SECTION 13. The acceptance by the settler and occupant of such certificate shall be considered as an agreement by him to pay the purchase price so fixed and in the installments and at the interest specified in the certificate, and he shall from such acceptance become a debtor to the Government in the amount together with all accrued interest. In the event that any such settler and occupant may desire to pay for his holding of said lands in cash, or within a shorter period of time than that above specified, he shall be allowed to do so, and if payment be made in cash the lands shall at once be conveyed to him as above provided. But if purchase is made by installments, the certificate shall so state in accordance with the facts of the transaction; Provided, however, That every settler and occupant who desires to purchase his holding must enter into the agreement to purchase such holding by **accepting the said certificate** and ***executing the said receipt*** whenever called on to do so by the Chief of the Bureau of Public Lands, and a failure on the part of the settler and occupant to comply with this requirement shall be considered as a refusal to purchase, and he shall be ousted as above provided and thereafter his holding may be leased or sold as in case of unoccupied lands: And provided further, That the Chief of the Bureau of Public Lands in this discretion may require to any settler and occupant so desiring to purchase that, pending the investigation requisite to fix the precise extent of his holding and its cost he shall attorn to the Government as its tenant and pay a reasonable rent for the use of his holding; but no such lease shall be for a longer term that three years, and refusal on the part of any settler and occupant so desiring to purchase to execute a lease pending such investigation shall be treated as a refusal either to lease or to purchase, and the Chief of the Bureau of Public Lands shall proceed to oust him as in this Act provided. (emphasis, italics and underscoring supplied)

IN FINE, there is no statutory basis for the requirement of the Department Secretary's signature on the Certificate of Sale, apart from a strained deduction of Section 18.

A deeper consideration of the operative act of compliance with the requirement in Section 18 that "[n]o lease or sale made by Chief of the Bureau of Public Lands under the provisions of this Act shall be valid until **approved** by the Secretary" is in order.[10]

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[10] *Vide* COMMONWEALTH ACT No. 32 (1936), Sec. 2 also uses the phrase "subject to the approval of the Secretary of Agriculture and Commerce"

The general proposition is that a petitioner's claim of ownership must fail in the absence of positive evidence showing the Department Secretary's approval, which cannot simply be presumed or inferred from certain acts.[11]

Jurisprudential review is gainful only insofar as settling that the "approval" by the Department Secretary is indispensable to the validity of the sale. **Case law does *not* categorically state that the required "approval" must be in the form of a *signature* on the Certificate of Sale.** *Alonso v. Cebu Country Club, Inc.*[12] merely declared that the "deed of sale" was "not approved" by the Department Secretary.[13] *Solid State Multi-Products Corp. v. Court of Appeals*[14] simply found that the Department Secretary "approv[ed] th[e] sale without auction" and returned or referred the "application" to the Director of Lands.[15] In *Liao v. Court of Appeals*,[16] the sale certificates were "approved" by a different[17] Department Secretary. *Dela Torre v. Court of Appeals*[18] mentioned nothing about the signature of the Department Secretary, as the instrument of conveyance was yet to be issued.

What then is the positive evidence of "approval" to lend validity to the sale of friar lands?

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and later the "Secretary of Natural Resources," as amended by COMMONWEALTH ACT No. 316 (1938).

[11] *Alonso v. Cebu Country Club, Inc.*, 462 Phil. 546, 561 (2003).

[12] 426 Phil. 61 (2002).

[13] *Id.* at 71, 81.

[14] 274 Phil. 30 (1991).

[15] *Id.* at 35, 42.

[16] 380 Phil. 400 (2000).

[17] *Id.* at 413-414. It must be noted, however, that when the sale certificates were issued in 1913, the amendatory laws (*supra* note 10) replacing the Secretary of Interior were not yet enacted.

[18] 381 Phil. 819 (2000). The Court denoted that a transfer or assignment of a certificate of sale only needs to be submitted to the Chief of the Bureau of Public Lands for his approval and registration. In the present case, the lack of the approval of the Department Secretary in the Assignments of Sale Certificate is inconsequential (*vide* ACT No. 1120, Sec. 16).

The *ponencia*[19] concludes, as a matter of course on the strength of Sections 11, 12 and 15, that the certificate of sale must be **signed** by the Department Secretary for the sale to be valid. As discussed earlier, these three Sections neither support the theory that such signing is required in the sale certificate nor shed light to the specifics of approval.

I submit that the Department Secretary's signature on the certificate of sale is not one of the "requirements for the issuance of the Deed of Conveyance under Act No. 1120." To require another signature of the Department Secretary on the Certificate of Sale, on top of that deemed placed by Order 16-05 on the Deed of Conveyance, is to impose a *redundant* requirement and *render irrelevant the spirit of said Order.*

IN FINE, petitioners having complied with the conditions for the applicability of Order 16-05, their Deed of Conveyance is "deemed signed or otherwise ratified" by said Order.

It bears emphasis that Order 16-05 is a positive act on the part of the Department Secretary to remedy the situation where, all other conditions having been established by competent evidence, the signature of the Department Secretary is lacking. The Order aims to rectify a previous governmental inaction on an otherwise legally valid claim, or affirm an earlier approval shown to be apparent and consistent by a credible paper trail.

Obviously, the incumbent Department Secretary can no longer probe into the deep recesses of his deceased predecessors, or unearth irretrievably tattered documents at a time when the country and its records had long been torn by war, just to satisfy himself with an explanation in the withholding of the signature. The meat of Order 16-05 contemplates such bone of contention as in the present case.

The cloud of doubt regarding the validity of the conveyance to petitioners' predecessors-in-interest having been removed by Order No. 16-05, petitioners' title over Lot 823 of the Piedad Estate is, I submit, valid.

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[19] *Ponencia*, pp. 92-93.

WHEREFORE, I VOTE to declare the Manotoks' Transfer Certificate of Title No. RT-22481 (372302) *VALID*.

I *CONCUR* with the denial of the Barqueses' petition for reconstitution of title, and the declaration of nullity of Felicitas B. Manahan's Deed of Conveyance No. V-200022.

DISSENTING OPINION

CARPIO, *J.*:

In its 18 December 2008 Resolution, this Court remanded these cases to the Court of Appeals, with the following directive:

> The primary focus for the Court of Appeals, as an agent of this Court, in receiving and evaluating evidence should be whether the Manotoks can trace their claim of title to a valid alienation by the Government of Lot No. 823 of the Piedad Estate, which was a Friar Land. On that evidence, this Court may ultimately decide whether annulment of the Manotok title is warranted, similar to the annulment of the Cebu Country Club title in *Alonso*. At the same time, the court recognizes that the respective claims to title by other parties such as the Barques and the Manahans, and the evidence they may submit on their behalf, may have an impact on the correct determination of the status of the Manotok title. It would thus be prudent, in assuring the accurate evaluation of the question, to allow said parties, along with the OSG, to participate in the proceedings before the Court of Appeals. If the final evidence on record definitely reveals the proper claimant to the subject property, the Court would take such fact into consideration as it adjudicates final relief.
>
> For the purposes above-stated, the Court of Appeals is tasked to hear and receive evidence, conclude the proceedings and submit to this Court a report on its findings and recommended conclusions within three (3) months from notice of this Resolution.
>
> To assist the Court of Appeals in its evaluation of the factual record, the Office of the Solicitor General is directed to secure all the pertinent relevant records from the Land Management Bureau and the Department of Environment and Natural Resources and submit the same to the Court of Appeals.

After a series of hearings and after evaluating the documentary evidence submitted by the parties, the Court of Appeals submitted its Commissioners' Report recommending the following:

> WHEREFORE, premises considered, it is respectfully recommended to the Honorable Supreme Court *En Banc*:
>
> 1. To deny the reconstitution of the title of Homer L. Barque and to declare TCT No. 210177 null and void *ab initio*;
>
> 2. To declare reconstituted title TCT No. RT-22481 (372302) in the names of the Manotok children and grandchildren as well as all other derivative titles null and void *ab initio*. As such, the Register of Deeds of Quezon be directed to cancel TCT No. RT-22481 (372302) and all its derivative titles;
>
> 3. To declare null and void the Deed of Conveyance No. V-200022 dated October 30, 2000 issued to Felicitas B. Manahan;
>
> 4. To declare Lot 823 of the Piedad Estate as still part of the patrimonial property of the National Government and for the Solicitor General to take appropriate action to recover the subject lot from the MANOTOKS.
>
> Respectfully submitted.[1]

Acting on the Commissioners' Report, the Court in its majority opinion denies the petitions of the Manotoks and the interventions of the Manahans, and declares void TCT No. RT-22481 (372302) in the name of Severino Manotok IV, *et al*. The dispositive portion of the majority opinion states:

> WHEREFORE, the petitions filed by the Manotoks under Rule 45 of the 1997 Rules of Civil Procedure, as amended, as well as the petition-in-intervention of the Manahans, are DENIED. TCT No. RT-22481 (372302) in the name of Severino Manotok IV, *et al*. is hereby declared NULL and VOID, and the Register of Deeds of Caloocan City is hereby ordered to CANCEL the same. Lot 823 of the Piedad Estate, Quezon City, legally belongs to the NATIONAL GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, without prejudice to the institution of REVERSION proceedings by the State through the Office of the Solicitor General.

[1] pp. 218-219.

With costs against petitioners.

SO ORDERED.

I dissent from the opinion of the majority insofar as it declares that the absence of approval by the Secretary of the Interior/ Agriculture and Natural Resources of Sale Certificate No. 1054 and Deed of Conveyance No. 29204 warrants the annulment of the Manotoks' title.

The majority opinion is premised on Section 18 of Act No. 1120,[2] which provides:

> Section 18. No lease or sale made by Chief of the Bureau of Public Lands under the provisions of this Act shall be valid until approved by the Secretary of the Interior.

Under Section 18, any sale of friar land by the Chief of the Bureau of Public Lands (now Director of Lands) shall not be valid until approved by the Secretary. This means that the Secretary, under Section 18, approves the sale and thus signs the Deed of Conveyance upon full payment of the purchase price. However, under Section 12 of Act No. 1120, the Director of Lands signs the Sales Certificate upon payment of the first installment.[3] Section 12 of Act No. 1120 provides:

> Section 12. It shall be the duty of the Chief of the Bureau of Public Lands by proper investigation to ascertain what is the actual value of the parcel of land held by each settler and occupant, taking into consideration the location and quality of each holding of land, and any other circumstances giving its value. The basis of valuation shall likewise be, so far as practicable, such that the aggregate of the values of all the holdings included in each particular tract shall be equal to the cost to the Government to the entire tract, including the cost of surveys, administration and interest upon the purchase money to the time of sale. **When the cost thereof shall have been thus ascertained, *the Chief of the Bureau of Public Lands shall give the said settler and occupant a certificate* which shall set forth in detail that the Government has agreed to sell to such settler and occupant the amount of land so held by him, at the**

[2] Friar Lands Act.

[3] See *Dela Torre v. Court of Appeals*, 381 Phil. 819 (2002).

price so fixed, payable as provided in this Act at the office of the Chief of Bureau of Public Lands, in gold coin of the United States or its equivalent in Philippine currency, and that upon the payment of the final installment together with all accrued interest the Government will convey to such settler and occupant the said land so held by him by proper instrument of conveyance, which shall be issued and become effective in the manner provided in section one hundred and twenty-two of the Land Registration Act. The Chief of the Bureau of Public Lands shall, in each instance where a certificate is given to the settler and occupant of any holding, take his formal receipt showing the delivery of such certificate, signed by said settler and occupant.[4] (Boldfacing and italicization supplied)

Under Section 12, it is only the Director of Land who signs the Sales Certificate. The Sales Certificate operates as a contract to sell which, under the law, the Director of Lands is authorized to sign and thus bind the Government as seller of the friar land. This transaction is a sale of private property because friar lands are patrimonial properties of the Government.[5] In short, the

[4] Section 122 of the Land Registration Act provides:

Sec. 122. Whenever public lands in the Philippine Islands belonging to the Government of the United States or to the Government of the Philippine Islands are alienated, granted, or conveyed to persons or to public or private corporations, the same shall be brought forthwith under the operation of this Act and shall become registered lands. It shall be the duty of the official issuing the instrument of alienation, grant, or conveyance in behalf of the Government to cause such instrument, before its delivery to the grantee, to be filed with the register of deeds for the province where the land lies and to be there registered like other deeds and conveyances, whereupon a certificate shall be entered as in other cases of registered land, and an owner's duplicate certificate issued to the grantee. The deed, grant, or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land, but shall operate as a contract between the Government and the grantee and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the lands, and in all cases under this Act registration shall be made in the office of the register of deeds for the province where the land lies. The fees for registration shall be paid by the grantee. After due registration and issue of the certificate and owner's duplicate such land shall be registered land for all purposes under this Act.

[5] *Alonso v. Cebu Country Club, Inc.*, Resolution, 462 Phil. 546 (2003) citing *Jacinto v. Director of Lands*, 49 Phil. 853 (1926).

law expressly authorizes the Director of Lands to sell private or patrimonial property of Government under a contract to sell. On the other hand, under Section 18, the Secretary signs the Deed of Conveyance because the Secretary must approve the sale made initially by the Director of Lands. The Deed of Conveyance operates as a deed of absolute sale which the Secretary signs upon full payment of the purchase price. The Deed of Conveyance, when presented, is authority for the Register of Deeds to issue a new title to the buyer as provided in Section 122 of the Land Registration Act.

The majority cite the ruling in *Alonso v. Cebu Country Club, Inc.*[6] and other cases[7] which held that the approval of the Secretary of Agriculture and Commerce is indispensable for the validity of the sale of friar lands. Following the ruling in these cases, the majority hold that Sale Certificate No. 1054 and Deed of Conveyance No. 29204 are void.

Alonso categorically held that "(a)pproval by the Secretary of Agriculture and Commerce is indispensable for the validity of the sale."[8] The majority further cite the resolution of the motion for reconsideration in *Alonso*, thus:

> Section 18 of Act No. 1120 or the Friar Lands Act unequivocally provides: 'No lease or sale made by the Chief of the Bureau of Public Lands (now Director of Lands) under the provisions of this Act shall be valid until approved by the Secretary of Interior (now, the Secretary of Natural Resources).' Thus, petitioners' claim of ownership must fail in the absence of positive evidence showing the approval of the Secretary of Interior. Approval of the Secretary of the Interior cannot simply be presumed or inferred from certain acts since the law is explicit in its mandate. This is the settled rule as enunciated in *Solid State Multi-Products Corporation vs. Court of Appeals* and reiterated

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[6] 426 Phil. 61 (2002).

[7] The *ponente* also cited *Solid State Multi-Products Corporation v. Court of Appeals*, 274 Phil. 30 (1991) and *Liao v. Court of Appeals*, 380 Phil. 400 (2000).

[8] *Supra* note 6 at 81-82.

in *Liao vs. Court of Appeals*. Petitioners have not offered any cogent reason that would justify a deviation from this rule.[9]

However, the ruling in *Alonso* was superseded with the issuance by then Department of Environment and Natural Resources (DENR) Secretary Michael T. Defensor of DENR Memorandum Order No. 16-05,[10] which provides:

WHEREAS, it appears that there are uncertainties in the title of the land disposed by the Government under Act 1120 or the Friar Lands Act due to the lack of the signature of the Secretary on the Deeds of Conveyance;

WHEREAS, said Deeds of Conveyance were only issued by the then Bureau of Lands (now the Land Management Bureau) after full payment had been made by the applicants thereon subject to the approval of the Secretary of the then Department of Interior, then Department of Agriculture and Natural Resources and presently, the Department of Environment and Natural Resources, in accordance with Act 1120;

WHEREAS, **some of these Deeds of Conveyance on record in the field offices of the Department and the Land Management Bureau do not bear the signature of the Secretary despite full payment by the friar land applicant as can be gleaned in the Friar Lands Registry Book**;

WHEREAS, **it is only a ministerial duty on the part of the Secretary to sign the Deed of Conveyance once the applicant had already made full payment on the purchase price of the land**;

WHEREFORE, for and in consideration of the above premises, and **in order to remove all clouds of doubt regarding the validity of these instruments, it is hereby declared that *all* Deeds of Conveyance that do not bear the signature of the Secretary are deemed signed or otherwise ratified by this Memorandum Order** provided, however, that full payment of the purchase price of the land and compliance with all the other requirements for the issuance of the Deed of Conveyance under Act 1120 have been accomplished by the applicant;

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[9] *Alonso v. Cebu Country Club, Inc.*, Resolution, *supra* note 5.

[10] Dated 27 October 2005.

This Memorandum Order, however, does not modify, alter or otherwise affect any subsequent assignments, transfers and/or transactions made by the applicant or his successors-in-interest or any rights arising therefrom after the issuance of a Transfer Certificate of Title by the concerned Registry of Deeds. (Italicization and boldfacing supplied)

Despite the issuance of DENR Memorandum Order No. 16-05, the majority still hold that the memorandum order does not apply to the Manotoks' title. The majority assert that the Manotoks could not benefit from DENR Memorandum Order No. 16-05 because the memorandum order refers only to deeds of conveyance on file with the records of DENR "**field offices**."

I find the majority's limited application of DENR Memorandum Order No. 16-05 erroneous.

While the third WHEREAS clause of DENR Memorandum Order No. 16-05 refers to Deeds of Conveyance on record in the "field offices" of the DENR, the dispositive portion categorically states that "***all* Deeds of Conveyance that do not bear the signature of the Secretary are deemed signed or otherwise ratified**" by the Memorandum Order. The word "all" means everything, without exception. DENR Memorandum Order No. 16-05 should apply to **all Deeds of Conveyance**, as declared in its dispositive portion, and should not be limited to those on file in DENR "field offices."

Assuming, however, that only records on file in the DENR "field offices" are covered by DENR Memorandum Order No. 16-05, **the DENR has a "field office" in Manila**[11] **for land titles in the National Capital Region (NCR) region**. **This "field office" in Manila is the DENR's Regional Office for the NCR, which is one of the country's 17 administrative regions. In fact, there is no city or municipality in the Philippines that is not under a "field office" of the DENR**. Executive Order No. 192[12] provides:

[11] The field office for NCR is located at L & S Building, Roxas Boulevard, Manila.

[12] Order Providing for Reorganization of the Department of Environment, Energy and Natural Resources, Renaming it as the Department of Environment and Natural Resources, and For Other Purposes. Dated 10 June 1987.

> Section 20. Field Offices of the Department
>
> **The *field offices* of the Department are the Environment and Natural Resources *Regional Offices* in the thirteen (13) [now seventeen (17)] administrative regions of the country, the Environment and Natural Resources Provincial Office in every province and the Community Office in municipalities whenever deemed necessary**.[13] The regional offices of the Bureau of Forest Development, Bureau of Mines and Geo-sciences, and Bureau of Lands in each of the thirteen (13) administrative regions and the research centers of the Forest Research Institute are hereby integrated into the Department-wide Regional Environment and Natural Resources Office of the Department, in accordance with Section 24(e) hereof. A Regional Office shall be headed by a Regional Executive Director (with the rank of Regional Director) and shall be assisted by five (5) Regional Technical Directors (with the rank of Assistant Regional Director) each for Forestry, Land Management, Mines and Geo-sciences, Environmental Management, and Ecosystems Research. The Regional Executive Directors and Regional Technical Directors shall be Career Executive Service Officers. (Boldfacing and italicization supplied)

Clearly, as expressly stated in Section 20 of Executive Order No. 192, all DENR Regional Offices, including the Regional Office in NCR, are "field offices" of the DENR.

Quezon City, where the land in question is situated, is under DENR's NCR "field office." **In 1919, when the Government sold the subject friar land to the Manotoks' predecessors-in-interest, the land was part of the province of Rizal,**[14] **which also has a "field office."** Indisputably, DENR Memorandum Order No. 16-05 applies to all Deeds of Conveyance of friar lands anywhere in the Philippines without exception. Thus, conveyances of land within the NCR, including the conveyance to the Manotoks, are covered by DENR Memorandum Order No. 16-05.

The first WHEREAS clause clearly states that **what DENR Memorandum Order No. 16-05 seeks to cure are the**

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[13] There are now 17 Administrative Regions. See http://www. philippines_ archipelago.com/

[14] CA *rollo*, Vol. 11, p. 7226.

"uncertainties in the title of the land disposed by the Government under Act 1120 or the Friar Lands Act due to the lack of signature of the Secretary on the Deeds of Conveyance." If we apply DENR Memorandum Order No. 16-05 only to Deeds of Conveyance on record in the "field offices" outside of NCR, the purpose of the issuance of DENR Memorandum Order No. 16-05 will not be fully accomplished.

The total number of areas covered by friar lands is 396,690.20 acres[15] divided as follows:

Estate	Area (in acres)
Banilad	4,812.50
Binagbag	736.88
Biñan	9,147.50
Calamba	34,182.50
Dampol	2,322.33
Guiguinto	2,364.21
Imus	45,607.50
Isabela	49,727.50
Lolomboy	12,943.73
Malinta	8,935.00
Matamo	29.50
Muntinlupa	**7,067.50**
Naic	19,060.00
Orio	2,290.00
Piedad	**9,650.00**
San Francisco de Malabon	**28,622.50**
San Jose	58,165.00
San Marco	218.55
Santa Cruz de Malabon	**24,487.50**
Santa Maria de Pandi	25,855.00
Santa Rosa	13,675.00
Tala	**16,740.00**

[15] 160,535.828 hectares.

Talisay-Minglanilla	20,050.00[16]
	Total 396,690.20

The total area of friar lands in NCR, specifically in Muntinlupa, Piedad, San Francisco de Malabon, Santa Cruz de Malabon, and Tala is 86,567.50 acres or *35,032.624 hectares.* If DENR Memorandum Order No. 16-05 will not be applied to these areas, the Court will be disquieting the titles held by generations of landowners since the passage in 1904 of Act No. 1120. Thousands, if not hundreds of thousands, of landowners could be dispossessed of their lands in these areas.

The majority opinion's limited application of DENR Memorandum Order No. 16-05 is violative of the equal protection clause of the Constitution which requires, for valid classification, the following:

(1) It must be based upon substantial distinctions;

(2) It must be germane to the purposes of the law;

(3) It must not be limited to existing conditions only; and

(4) It must apply equally to all members of the class.[17]

The groupings must be characterized by substantial distinctions that make for real differences so that one class may be treated and regulated differently from another.[18] To limit the application of DENR Memorandum Order No. 16-05 to Deeds of Conveyance in the "field offices" **outside of NCR** would be discriminatory as there is no substantial distinction between the files on record in the DENR "field offices" outside of NCR and the files on record in the DENR "field office" in NCR.

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[16] THE FRIAR-LAND INQUIRY PHILIPPINE GOVERNMENT [Reports by W. Cameron Forbes, Governor-General, Dean C. Worcester, Secretary of the Interior, and Frank W. Carpenter, Executive Secretary], p. 177 (1910).

[17] See *Quinto v. Commission on Elections*, G.R. No. 189698, 1 December 2009, 606 SCRA 258.

[18] See *Central Bank Employees Assoc., Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004).

More importantly, the Manotoks became owners of the land upon their full payment of the purchase price to the Government on 7 December 1932. Upon such full payment, the Manotoks had the right to demand conveyance of the land and issuance of the corresponding title to them. This is the law and jurisprudence on friar lands.

Thus, the Court has held that in cases of sale of friar lands, the only recognized resolutory condition is non-payment of the full purchase price.[19] Pursuant to Section 12 of Act No. 1120, **"upon payment of the last installment together with all accrued interest[,] the Government will convey to [the] settler and occupant the said land so held by him by proper instrument of conveyance, which shall be issued and become effective in the manner provided in section one hundred and twenty-two of the Land Registration Act."** Once it is shown that the full purchase price had been paid, the issuance of the proper certificate of conveyance necessarily follows. There is nothing more that is required to be done as the title already passes to the purchaser.

The Court has ruled that equitable and beneficial title to the friar land passes to the purchaser from the time the first installment is paid and a certificate of sale is issued.[20] When the purchaser finally pays the final installment on the purchase price and is given a deed of conveyance and a certificate of title, the title, at least in equity, ***retroacts*** to the time he first occupied the land, paid the first installment and was issued the corresponding certificate of sale.[21] The sequence then is that a certificate of sale is issued upon payment of the first installment. Upon payment of the final installment, the deed of conveyance is issued.

It is the Deed of Conveyance that must bear the signature of the Secretary of Interior/Agriculture because it is only when the final installment is paid that the Secretary can approve the sale, the purchase price having been fully paid.

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[19] *Dela Torre v. Court of Appeals, supra* note 3.

[20] *Id.*

[21] *Id.*

This is why DENR Memorandum Order No. 16-05 refers only to the Deed of Conveyance, and not to the Sale Certificate, as the document that is "deemed signed" by the Secretary. **In short, Section 18 of Act No. 1120 which states that "(n)o xxx sale xxx shall be valid until approved by the Secretary of Interior" refers to the approval by the Secretary of the Deed of Conveyance.**

DENR Memorandum Order No. 16-05 expressly acknowledges that "**it is only a *ministerial duty* on the part of the Secretary to sign the Deed of Conveyance once the applicant had already made full payment on the purchase price of the land**." The majority ***expressly admit*** in their *Reply to the Dissenting Opinion* that Memorandum Order No. 16-05:

> x x x ***correctly*** **stated that it is only a *ministerial duty* on the part of the Secretary to sign the Deed of Conveyance once the applicant had made full payment on the purchase price of the land. Jurisprudence teaches us that *notwithstanding the failure of the government to issue the proper instrument of conveyance* when the purchaser finally pays the final installment of the purchase price, *the purchaser of friar land still acquired ownership over the subject land***. (Italicization supplied)

To repeat, the majority **expressly admit** that it is the ***ministerial duty*** of the Secretary to sign the Deed of Conveyance once the purchaser of friar land, like the Manotoks, pays in full the purchase price. The majority also **expressly admit** that upon such full payment the purchaser acquires ownership of the land ***"notwithstanding the failure"*** of the Secretary to sign the Deed of Conveyance.

The Manotoks proved beyond any doubt that they purchased, and paid for in full, the land. Deed of Conveyance No. 29204, dated 7 December 1932, on its face expressly acknowledged receipt by the Government of the amount of ₱2,363.00 in consideration for Lot 823 granted and conveyed to Severino Manotok.[22] Thus, Deed of Conveyance No. 29204 states:

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[22] CA *rollo*, Vol. 7, p. 3489.

I, the Acting DIRECTOR OF LANDS, acting for an (sic) on behalf of the GOVERNMENT OF THE PHILIPPINE ISLANDS, in consideration of TWO THOUSAND THREE HUNDRED SIXTY THREE AND 00/100 pesos (₱2,363.00), **receipt whereof is acknowledged**, do hereby grant and convey to SEVERINO MANOTOK, Filipino, of legal age, married to Maria Ramos, residing at 2318 J. Luna, Tondo, Manila in the City of Manila and his heirs and assigns, Lot No. 823 of the PIEDAD Friar Lands Estate, situated in the Municipality of Caloocan, Province of Rizal, Philippine Islands, containing 34 hectares, 29 ares and 45 centares, according to subdivision plan No. A-6 as approved by the Court of Land Registration on the 25th day of July, 1913 and described On the back hereof of which land the government OF THE PHILIPPINE ISLANDS is the registered owner in accordance with the provisions of the Land Registration Act, title thereto being evidenced by Certificate No. 614 of the land records of the province.[23] (Emphasis supplied)

To repeat, Deed of Conveyance No. 29204 expressly and unequivocally acknowledged that Severino Manotok had fully paid the purchase price to the Government. **Since the majority expressly admit that upon full payment of the purchase price it becomes the ministerial duty of the Secretary to approve the sale, then the majority must also necessarily admit that the approval of the Secretary is a mere formality that has been complied with by the issuance of Memorandum Order No. 16-05. Since the majority further expressly admit that upon full payment of the purchase price ownership of the friar land passes to the purchaser, *despite the failure of the Secretary to sign the Deed of Conveyance*, then the majority must also necessarily admit that the Manotoks became the absolute owners of the land upon their full payment of the purchase price on 7 December 1932.**

In short, the majority categorically admit that upon full payment of the purchase price, the buyer *ipso facto* becomes the absolute owner of the friar land, and it becomes the ***ministerial duty*** of the Secretary, who cannot otherwise refuse, to sign the Deed of Conveyance. As absolute owners of the land who have fully paid the purchase price to the Government, and whose ownership

[23] *Id.*

retroacted to 10 March 1919,[24] the Manotoks have the right to compel the Secretary, and the Secretary has the ministerial duty, to sign Deed of Conveyance No. 29204. In fact, the Manotoks have been paying the real estate taxes on the land since at least 1933. The Office of the Provincial Assessor declared the title in Severino Manotok's name for tax purposes on 9 August 1933[25] and assessed Severino Manotok beginning with the year 1933.

Indisputably, upon full payment of the purchase price, full and absolute ownership passes to the purchaser of friar land. In the case of the Manotoks' title, the Deed of Conveyance was issued except that it lacked the signature of the Secretary which the majority erroneously hold is still indispensable pursuant to *Alonso*. However, *Alonso* should not be applied to the Manotoks' title because DENR Memorandum Order No. 16-05 was not yet issued when the Court decided *Alonso.* The absence of the Secretary's signature in the Deed of Conveyance in *Alonso* was never cured and hence the Court in *Alonso* voided the Deed of Conveyance. Besides, in *Alonso* the corresponding torrens title was never issued even after a lapse of 66 years from the date of the Deed of Conveyance.[26] In sharp contrast, here the lack of the Secretary's signature in the Manotoks' Deed of Conveyance No. 29204 was cured by the issuance of DENR Memorandum Order No. 16-05, which expressly states that **"all Deeds of Conveyance that do not bear the signature of the Secretary are deemed signed or ratified x x x."** Moreover, the Manotoks have been issued their torrens title way back in 1933.

Section 122 of Act No. 496[27] states that "[i]t shall be the duty of the official issuing the instrument of alienation, grant, or conveyance in behalf of the Government to cause such instrument, before its delivery to the grantee, to be filed with

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[24] Date of Sale Certificate No. 1054.

[25] CA *rollo*, Vol. 7, p. 3191.

[26] From the time the final deed of sale was issued in 1926 until the filing of the complaint in 1992.

[27] The Land Registration Act.

the register of deeds for the province where the land lies and to be there registered like other deeds and conveyances, whereupon a certificate shall be entered as in other cases of registered land, and an owner's duplicate certificate issued to the grantee." TCT No. 22813 would not have been issued in the name of Severino Manotok if Deed of Conveyance No. 29204 had not been delivered to the Register of Deeds of the Province of Rizal to which the land covered by the Manotoks' title then belonged. The Manotoks should not be punished if the documents leading to the issuance of TCT No. 22813 could no longer be found in the files of the government office, considering that these were pre-war documents and considering further the lack of proper preservation of documents in some government agencies.

The fact remains that the Manotoks were able to present a certified true copy of Deed of Conveyance No. 29204 secured from the National Archives which is the official repository of government and public documents. This Deed of Conveyance No. 29204 was signed by the Director of Lands and lacked only the signature of the Secretary of Interior/ Agriculture. Memorandum Order No. 16-05 speaks of "*all* Deeds of Conveyance that do not bear the signature of the Secretary" and thus includes Deed of Conveyance No. 29204. Under Memorandum Order No. 16-05, such Deeds of Conveyance "are deemed signed" by the Secretary. Clearly, Memorandum Order No. 16-05 applies squarely to the Manotoks' title for two reasons. First, Deed of Conveyance No. 29204 was signed by the Director of Lands but lacked only the signature of the Secretary. Second, the purchase price for the land subject of Deed of Conveyance No. 29204 had been fully paid on 7 December 1932, more than 77 years ago.

The majority argue that Memorandum Order No. 16-05 cannot supersede or amend Section 18 of Act 1120. The majority likewise state that administrative issuances such as Memorandum Order No. 16-05 must conform to and must not contravene existing laws.

There is no conflict between Memorandum Order No. 16-05 and Section 18 of Act No. 1120. Memorandum Order No. 16-05 recognizes the formality of the signature of the Secretary of Interior/Agriculture on Deeds on Conveyances. Memorandum Order No. 16-05 complies with Section 18 of Act No. 1120 by ratifying the Deeds of Conveyances that were not signed, for one reason or another, by the Secretary. Memorandum Order No. 16-05 only supplies a formality because as the majority expressly admit, the signature of the Secretary is merely a ministerial act upon full payment of the purchase price. Memorandum Order No. 16-05 does not dispense with the Secretary's signature but rather cures the absence of such signature by stating that "all Deeds of Conveyance that do not bear the signature of the Secretary are **deemed signed**." It is as if the DENR Secretary signed each and every Deed of Conveyance that lacked the signature of the Secretary, provided of course that the purchase price had been fully paid. To repeat, Memorandum Order No. 16-05 applies to Deed of Conveyance No. 29204 because the land was already fully paid and the Deed of Conveyance was signed by the Director of Lands but only lacked the signature of the Secretary of Interior/Agriculture.

The majority assert that Section 18 of Act No. 1120 should be read in conjunction with Section 15 and that "[w]here there is no valid certificate of sale in the first place, the purchaser does not acquire any right of possession and purchase." The majority state that "the existence of a valid certificate of sale must first be established with clear and convincing evidence before a purchaser is deemed to have acquired ownership over a friar land ***notwithstanding*** **the non-issuance by the Government, for some reason or another, of a deed of conveyance after completing the installment payments.**" The majority grossly misappreciate the facts. Here, the Government issued Deed of Conveyance No. 29204 to the Manotoks, the existence of which the Government does not dispute. Moreover, the existence of the Manotoks' Sale Certificate No. 1054 has been established beyond any doubt by the existence of three succeeding Deeds of Assignment of Sale Certificate No. 1054.

While the Land Management Bureau (LMB) has no copy of the original Sale Certificate No. 1054 dated 10 March 1919 in the names of Regina Geronimo, Modesto Zacarias and Felicisimo Villanueva (the original grantees),[28] **the LMB has on its file the original of *Assignment of Sale Certificate No. 1054* between Regina Geronimo, Zacarias Modesto and Felicisimo Villanueva as assignors and Zacarias Modesto as assignee, dated 11 March 1919,**[29] **and approved by the Director of Lands on 22 March 1919.**[30] **The National Archives has a copy of the *Assignment of Sale Certificate No. 1054* dated 7 June 1920**[31] **between Zacarias Modesto as assignor and Severino Manotok and M. Teodoro as assignees. The LMB also has on its file the original of *Assignment of Sale Certificate No. 1054* dated 4 May 1923**[32] **between M. Teodoro and Severino Manotok as assignors and Severino Manotok as assignee and approved on 23 June 1923 by the Acting Director of Lands**.[33]

The Assignment of Sale Certificate, which is an official form document of the Bureau of Lands, Friar Lands Division, states:

Department of Agriculture and Natural Resources
Bureau of Lands
Friar Lands Division

PIEDAD ESTATE }

RIZAL PROVINCE} ASSIGNMENT OF SALE CERTIFICATE 1054

This Assignment, made in duplicate, between M. Teodoro and Severino Manotok as ASSIGNOR, and SEVERINO MANOTOK as ASSIGNEE.

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[28] CA *rollo*, vol. 11, p. 7224 as per the letter, dated 1 December 2009, of Atty. Fe T. Tuanda, OIC of the Records Management Division.

[29] *Id.* at 7226.

[30] *Id.* at 7227.

[31] CA *rollo*, Vol. 12, p. 8590.

[32] CA *rollo*, Vol. 11, p. 7230.

[33] *Id.* at 7231.

Witnesseth: That the Assignor, for and in consideration of the sum ₱ receipt whereof is acknowledged, hereby sells, assigns and transfers to the said ASSIGNEE all right, title, and interest in and to lot 823 of the said Estate, acquired under and by the terms of sale certificate numbered 1054 dated March 10, 1919, together with all buildings and improvements on the said lot belonging to the said ASSIGNOR.

The said ASSIGNEE hereby accepts the said assignment and transfer and expressly agrees to be bound by and to keep and perform all the covenants and conditions expressed in the said sale certificate to be kept and performed by the VENDEE therein.

In Testimony Whereof, we hereunto set our hands.

Manila Manila Province, May 4, 1923.

(Sgd.) M. Teodoro
(Sgd.) Severino Manotok
Assignor

Manila Manila Province, May 4, 1923.

(Sgd.) Severino Manotok
Assignee

Signed in the presence of:

(Sgd.) no printed name
(Sgd.) no printed name

PHILIPPINE ISLANDS }
Province of Manila }ss. May 5, 1923

Before me, on the date and at the place above written, personally appeared the ASSIGNOR executing the foregoing instrument, who acknowledged it to be his free act and deed and exhibited his certificate of registration numbered F-87330 & F-30510 issued at Manila, & Manila, and dated March 12, 1923 & Feb. 28, 1923.

(Sgd.) no printed name
Notary Public, City of Manila
Commission expires on Dec. 31, 1924

Register No. 1001
Page 34.

PHILIPPINE ISLANDS }
Province of Manila }ss. May 5, 1923

Before me, on the date and at the place above written, personally appeared the ASSIGNEE executing the foregoing instrument, who acknowledged it to be his free act and deed and exhibited his certificate of registration numbered F-30510 issued at Manila, and dated February 28, 1923.

(Sgd.) no printed name
Register No. 1001 Notary Public, City of Manila
Page 34. Commission expires on Dec. 31, 1924

APPROVED: JUN 23 1923

(Sgd.) no printed name
Acting Director of Lands[34]

The **original** of ***Assignment of Sale Certificate No. 1054*** dated 4 May 1923 to Severino Manotok is **on file** with the Land Management Bureau as confirmed in the letter dated 1 December 2009 of Atty. Fe T. Tuanda, OIC of the Records Management Division.[35]

The Manotoks also submitted the **original** of Official Receipt No. 675257 dated 20 February 1929[36] issued by the Special Collecting Officer/Friar Lands Agent to Severino Manotok "For certified copy of Assignment of S. C. No. 1054 for lot no. 823." These documents indubitably show that, contrary to the majority's view, the Manotoks proved beyond any doubt the existence of Sale Certificate No. 1054 and the valid alienation by the Government of Lot No. 823.

The majority state that after the ruling of this Court in *Alonso*, Congress passed Republic Act No. 9443[37] (RA 9443) which provides:

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[34] *Id.* at 7230-7231.

[35] *Id.* at 7224.

[36] CA *rollo*, Vol. 7, p. 3150.

[37] An Act Confirming and Declaring, Subject to Certain Exceptions, the Validity of Existing Transfer Certificates of Title and Reconstituted Certificates

Section 1. All existing Transfer Certificates of Title and Reconstituted Certificates of Title duly issued by the Register of Deeds of Cebu Province and/or Cebu City covering any portions of the Banilad Friar Lands Estate, notwithstanding the lack of signatures and/or approval of the then Secretary of the Interior (later Secretary of Agriculture and Natural Resources) and/or the then Chief of the Bureau of Public Lands (later Director of Public Lands) in the copies of the duly executed Sale Certificates and Assignments of Sales Certificates, as the case may be, now on file with the Community Environment and Natural Resources (CENRO), Cebu City, are hereby confirmed and declared as valid titles and the registered owners recognized as absolute owners thereof.

This confirmation and declaration of validity shall in all respects be entitled to like effect and credit as a decree of regisration, binding the land and quieting the title thereto and shall be conclusive upon and against all persons, including the national government and all branches thereof; except when, in a given case involving a certificate of title or reconstituted certificate of title, there is clear evidence that such certificate of title or reconstituted certificate of title was obtained through fraud, in which case the solicitor general or his duly designated representative shall institute the necessary judicial proceeding to cancel the certificate of title or reconstituted certificate of title as the case may be, obtained through such fraud.

The majority declare that "[t]he enactment of RA 9443 signifies the legislature's recognition of the statutory basis of the *Alonso* ruling to the effect that in the absence of signature and/or approval of the Secretary of Interior/Natural Resources in the Certificates of Sale on file with the CENRO, the sale is not valid and the purchaser has not acquired ownership of the friar land. Indeed, Congress found it imperative to pass a new law in order to exempt the already titled portions of the Banilad Friar Lands Estate from the operation of Sec. 18."

While RA 9443 refers only to the Banilad Friar Lands Estate, to limit its application solely to the Banilad Friar Lands Estate will result in class legislation. RA 9443 should be extended to lands similarly situated. In *Central Bank Employees Assoc.*,

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of Title Covering the Banilad Friar Lands Estate, Situated in the First District of the City of Cebu. Approved on 9 May 2007.

Inc. v. Bangko Sentral ng Pilipinas,[38] the Court ruled that the grant of a privilege to rank-and-file employees of seven government financial institutions and its denial to BSP rank-and-file employees breached the latter's equal protection. In that case, the Court stated that "*[a]likes are being treated as unalikes without any rational basis.*"[39] That is the situation in the present case if RA 9443 shall apply only to the Banilad Friar Lands Estate. There is no substantial distinction between the sale of friar lands in Banilad and the sale of friar lands in other places except for their location. The Court further stated in *Central Bank Employees Assoc., Inc.*:

> [I]t must be emphasized that the equal protection clause does not demand absolute equality *but it requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced.* Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances which, if not identical, are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion; whatever restrictions cast on some in the group is equally binding on the rest.[40]

As such, if the lack of signatures and approval of the Secretary of Interior/Agriculture and the Director of Lands were cured with the passage of RA 9443, the benefits of the law should apply to other lands similarly situated.

ACCORDINGLY, I vote to (1) sustain the validity of Deed of Conveyance No. 29204, and *DECLARE* the Manotoks' title, namely, TCT No. RT-22481 (372302), *VALID***;** (2) *DENY* the reconstitution of the title of Homer L. Barque and *DECLARE* TCT No. 210177 *VOID*; and (3) *DECLARE* Deed of Conveyance No. V-20022 issued to Felicitas B. Manahan *VOID*.

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[38] *Supra* note 18.

[39] Italicization in the original.

[40] *Id.* at p. 583. Italicization in the original.

DISSENTING OPINION

SERENO, *J.*:

The function of law in modern societies is to allow a people to forge its common destiny and uphold its shared values in a predictable and orderly manner. Except in authoritarian regimes where the consent of the governed is immaterial from the point of view of the ruler and where illegitimate force compels obeisance, aspiring modern democracies collectively assign to the State the function of keeping order, not only in the streets, but in a more fundamental way – in meeting expectations that have been spelled out in the legal system. The function of courts, especially that of the Philippine Supreme Court within the State apparatus, is to issue judicial edicts that consistently uphold legitimate expectations to promote stability and not chaos. Thus a decision that introduces instability without an overweening legal reason that has emanated from the people themselves or from the legislature should instinctively be avoided by the Supreme Court. This the majority failed to do.

The Majority Decision accomplished only the following: (1) it introduced a stale, formalistic technical requirement into the system of acquisition of friar lands that trumps satisfaction of all the other elements of lawful, effective possession and ownership thereof; (2) it imbued a rigid meaning into the term "approval" by the Secretary of Agrarian and Natural Resources that ignores the wealth of jurisprudence in administrative law including the notion of operative facts and tacit approval; (3) it enabled forgers of documents to land to take advantage of the antiquity of a land system, or the fact that the land system had endured massive destruction of its records due to fire, to attack land titles made vulnerable by these circumstances; (4) it encouraged a microscopic scrutiny of all the technical requirements 106 years after the system of disposition of friar lands was set up, thus endangering the property rights of all title holders to friar lands; and (5) it left open to attack the established legal principles on sales and perfection of contracts. Contrary to the presumed intent of the majority of my brethren, their opinion has not

succeeded in clarifying the legal regime on friar lands but has instead created dangers for the system of property rights in the Philippines.

Thus, I lend my voice to the Dissenting Opinions of Justices Carpio and Carpio Morales. The majority should have considered the reasoning and objectives behind the Carpio and Carpio Morales Dissenting Opinions as promotive of property rights. Without stability of property rights, the country's economic development process and the pursuit of each man's right to happiness will in the long run be negated. This in turn up-ends expectations on the part of the body politic that transactions between property right holders and transferees of such rights will be respected. This respect for the sanctity of such transactions is supposed in turn to create a virtuous cycle of commerce, the end result being that of a prosperous wealth-creating system. What the Majority Decision did is exactly opposite the intent of our Constitution, when, in various provisions, it makes a stable market mechanism equivalent to economic due process. In Article II, Section 5 of the Constitution, the protection of property is deemed essential for the enjoyment by all the people of the blessings of democracy. The just and dynamic social order described in Section 9 of the same Article envisions a market system where transactions validly entered upon are upheld by courts. Article II, Section 1 in effect guarantees that the possession of all the requisites for title-holding by persons not be disturbed save by superior legal bases.

Should the legal system fail to promote the stability of property rights, there will be an increase in the uncertainty surrounding economic outcomes. If stability cannot be ensured and there is a lack of credible commitment on the part of the ruling body to safeguard the rights of the right-bearers (*i.e.* the holders of rights to property), the value of property is undermined by risk and there is far less incentive for investment. The choices economic entities make will be severely limited, being hampered by these disincentives, and as a result, economic growth will drop. Unpredictability and uncertainty with regard to future values, as well as the inefficiencies of outcomes brought about by an

uneven application of distributive arrangements of property rights, will assail the very foundations of our economic system. The Majority Decision throws into disarray the functional order of property laws.

When the Court in effect says that the following features of the Manotoks' claims are trumped by the lack of affixation of a signature — which the law in any case pronounces as but ministerial and thus superfluous — it in effect contradicts the logic of the Torrens system and the property rights system on which it is based. For one, it conveys a message to the public that 77-year possession, payment of realty taxes, and a plethora of documentary evidence are not enough to overturn a single technical detail which should have been in the first place supplied by the Government, not by the Manotoks. Secondly, it is simply wrong for the Court to ignore the remedial intent of DENR Memorandum Order No. 16-05, when the Order tries to supply a legal solution to the problems created by the failure of the Secretary of the Interior/Agriculture and Natural Resources to affix his signature to Deeds of Conveyance of friar lands.

While the private parties are expected to seek reconsideration of the Majority Decision, the Government is faced with a choice created by the unexpected windfall this Court has granted it in the form of the reverted land — whether to live with and profit by the Majority Decision, or to seek its reconsideration because of the over-all danger that the decision poses to the system of property rights. It can assert that DENR Memorandum Order No. 16-05 is the State's remedial measure intended to set to rest whatever doubts may have lingered regarding the legal requirements on friar lands. It must carefully and correctly assess the situation arisen from the Majority Decision that now confronts the State. After all, it will be the Government that will need to face the economic fall-out from an unstable property rights regime.

EN BANC

[G.R. No. 176951. August 24, 2010]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP) represented by LCP National President JERRY P. TREÑAS, CITY OF ILOILO represented by MAYOR JERRY P. TREÑAS, CITY OF CALBAYOG represented by MAYOR MEL SENEN S. SARMIENTO, and JERRY P. TREÑAS in his personal capacity as taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF BAYBAY, PROVINCE OF LEYTE; MUNICIPALITY OF BOGO, PROVINCE OF CEBU; MUNICIPALITY OF CATBALOGAN, PROVINCE OF WESTERN SAMAR; MUNICIPALITY OF TANDAG, PROVINCE OF SURIGAO DEL SUR; MUNICIPALITY OF BORONGAN, PROVINCE OF EASTERN SAMAR; and MUNICIPALITY OF TAYABAS, PROVINCE OF QUEZON,** *respondents.*

CITY OF TARLAC, CITY OF SANTIAGO, CITY OF IRIGA, CITY OF LIGAO, CITY OF LEGAZPI, CITY OF TAGAYTAY, CITY OF SURIGAO, CITY OF BAYAWAN, CITY OF SILAY, CITY OF GENERAL SANTOS, CITY OF ZAMBOANGA, CITY OF GINGOOG, CITY OF CAUAYAN, CITY OF PAGADIAN, CITY OF SAN CARLOS, CITY OF SAN FERNANDO, CITY OF TACURONG, CITY OF TANGUB, CITY OF OROQUIETA, CITY OF URDANETA, CITY OF VICTORIAS, CITY OF CALAPAN, CITY OF HIMAMAYLAN, CITY OF BATANGAS, CITY OF BAIS, CITY OF CADIZ, and CITY OF TAGUM, *petitioners-in-intervention.*

[G.R. No. 177499. August 24, 2010]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP) represented by LCP National President JERRY P. TREÑAS, CITY OF ILOILO represented by MAYOR

JERRY P. TREÑAS, CITY OF CALBAYOG represented by MAYOR MEL SENEN S. SARMIENTO, and JERRY P. TREÑAS in his personal capacity as taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF LAMITAN, PROVINCE OF BASILAN; MUNICIPALITY OF TABUK, PROVINCE OF KALINGA; MUNICIPALITY OF BAYUGAN, PROVINCE OF AGUSAN DEL SUR; MUNICIPALITY OF BATAC, PROVINCE OF ILOCOS NORTE; MUNICIPALITY OF MATI, PROVINCE OF DAVAO ORIENTAL; and MUNICIPALITY OF GUIHULNGAN, PROVINCE OF NEGROS ORIENTAL,** *respondents.*

CITY OF TARLAC, CITY OF SANTIAGO, CITY OF IRIGA, CITY OF LIGAO, CITY OF LEGAZPI, CITY OF TAGAYTAY, CITY OF SURIGAO, CITY OF BAYAWAN, CITY OF SILAY, CITY OF GENERAL SANTOS, CITY OF ZAMBOANGA, CITY OF GINGOOG, CITY OF CAUAYAN, CITY OF PAGADIAN, CITY OF SAN CARLOS, CITY OF SAN FERNANDO, CITY OF TACURONG, CITY OF TANGUB, CITY OF OROQUIETA, CITY OF URDANETA, CITY OF VICTORIAS, CITY OF CALAPAN, CITY OF HIMAMAYLAN, CITY OF BATANGAS, CITY OF BAIS, CITY OF CADIZ, and CITY OF TAGUM, *petitioners-in-intervention.*

[G.R. No. 178056. August 24, 2010]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP) represented by LCP National President JERRY P. TREÑAS, CITY OF ILOILO represented by MAYOR JERRY P. TREÑAS, CITY OF CALBAYOG represented by MAYOR MEL SENEN S. SARMIENTO, and JERRY P. TREÑAS in his personal capacity as taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF CABADBARAN, PROVINCE OF AGUSAN DEL NORTE; MUNICIPALITY OF CARCAR, PROVINCE OF CEBU; and MUNICIPALITY**

OF EL SALVADOR, MISAMIS ORIENTAL, *respondents.*

CITY OF TARLAC, CITY OF SANTIAGO, CITY OF IRIGA, CITY OF LIGAO, CITY OF LEGAZPI, CITY OF TAGAYTAY, CITY OF SURIGAO, CITY OF BAYAWAN, CITY OF SILAY, CITY OF GENERAL SANTOS, CITY OF ZAMBOANGA, CITY OF GINGOOG, CITY OF CAUAYAN, CITY OF PAGADIAN, CITY OF SAN CARLOS, CITY OF SAN FERNANDO, CITY OF TACURONG, CITY OF TANGUB, CITY OF OROQUIETA, CITY OF URDANETA, CITY OF VICTORIAS, CITY OF CALAPAN, CITY OF HIMAMAYLAN, CITY OF BATANGAS, CITY OF BAIS, CITY OF CADIZ, and CITY OF TAGUM, *petitioners-in-intervention.*

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENT CODE; PROVIDES FOR THE CRITERIA NECESSARY FOR THE CREATION OF A CITY.— The creation of local government units must follow the **criteria established in the Local Government Code** and not in any other law. There is only one Local Government Code. The Constitution requires Congress to stipulate in the Local Government Code all the criteria necessary for the creation of a city, including the conversion of a municipality into a city. Congress cannot write such criteria in any other law, like the Cityhood Laws. The clear intent of the Constitution is to insure that the creation of cities and other political units must follow **the same uniform, non-discriminatory criteria found solely in the Local Government Code**. Any derogation or deviation from the criteria prescribed in the Local Government Code violates Section 10, Article X of the Constitution. x x x Section 10, Article X of the Constitution expressly provides that **"no x x x city shall be created x x x except in accordance with the criteria established in the local government code."** This provision can only be interpreted in one way, that is, all the criteria for the creation of cities must be embodied exclusively in the Local Government Code. In this case, the Cityhood Laws,

which are unmistakably laws other than the Local Government Code, provided an exemption from the increased income requirement for the creation of cities under Section 450 of the Local Government Code, as amended by RA 9009. Clearly, the Cityhood Laws contravene the letter and intent of Section 10, Article X of the Constitution. Adhering to the explicit prohibition in Section 10, Article X of the Constitution does not cripple Congress' power to make laws. In fact, Congress is not prohibited from amending the Local Government Code itself, as what Congress did by enacting RA 9009. Indisputably, the act of amending laws comprises an integral part of the Legislature's law-making power. The unconstitutionality of the Cityhood Laws lies in the fact that Congress provided an exemption contrary to the express language of the Constitution that "[n]o x x x city x x x shall be created except in accordance with the criteria established in the local government code." In other words, Congress exceeded and abused its law-making power, rendering the challenged Cityhood Laws void for being violative of the Constitution.

2. ID.; ID.; AMENDMENT THEREOF DOES NOT CONTAIN ANY EXEMPTION FROM INCOME REQUIREMENT FOR A MUNICIPALITY TO BECOME A CITY.— RA 9009 amended Section 450 of the Local Government Code to increase the income requirement from ₱20 million to ₱100 million for the creation of a city. **This took effect on 30 June 2001. Hence, from that moment the Local Government Code required that any municipality desiring to become a city must satisfy the ₱100 million income requirement**. Section 450 of the Local Government Code, as amended by RA 9009, does not contain any exemption from this income requirement. In enacting RA 9009, Congress did not grant any exemption to respondent municipalities, even though their cityhood bills were pending in Congress when Congress passed RA 9009. The Cityhood Laws, all enacted ***after*** the effectivity of RA 9009, explicitly exempt respondent municipalities from the increased income requirement in Section 450 of the Local Government Code, as amended by RA 9009. **Such exemption clearly violates Section 10, Article X of the Constitution and is thus patently unconstitutional. To be valid, such exemption must be written in the Local Government Code and not in any other law, including the Cityhood Laws.** RA 9009 is not a law different from the Local Government

Code. Section 1 of RA 9009 pertinently provides: "**Section 450 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, is hereby amended** to read as follows: x x x." RA 9009 amended Section 450 of the Local Government Code. **RA 9009, by amending Section 450 of the Local Government Code, embodies the new and prevailing Section 450 of the Local Government Code.** Considering the Legislature's primary intent to curtail "the mad rush of municipalities wanting to be converted into cities," RA 9009 increased the income requirement for the creation of cities. To repeat, RA 9009 is not a law different from the Local Government Code, as it expressly amended Section 450 of the Local Government Code. The language of RA 9009 is plain, simple, and clear. Nothing is unintelligible or ambiguous; not a single word or phrase admits of two or more meanings. RA 9009 amended Section 450 of the Local Government Code of 1991 by increasing the income requirement for the creation of cities. There are no exemptions from this income requirement. Since the law is clear, plain and unambiguous that any municipality desiring to convert into a city must meet the increased income requirement, there is no reason to go beyond the letter of the law. Moreover, where the law does not make an exemption, the Court should not create one.

3. ID.; CONSTITUTIONAL LAW; OPERATIVE FACT DOCTRINE; CONSTRUED.— Under the operative fact doctrine, the law is recognized as unconstitutional but the effects of the unconstitutional law, prior to its declaration of nullity, may be left undisturbed as a matter of equity and fair play. In fact, the invocation of the operative fact doctrine is an admission that the law is unconstitutional. x x x The operative fact doctrine is a rule of equity. As such, it must be applied as **an exception to the general rule that an unconstitutional law produces no effects.** It can never be invoked to validate as constitutional an unconstitutional act. x x x **The operative fact doctrine never validates or constitutionalizes an unconstitutional law.** Under the operative fact doctrine, the unconstitutional law remains unconstitutional, but the **effects** of the unconstitutional law, prior to its judicial declaration of nullity, may be left undisturbed as a matter of equity and fair play. In short, the operative fact doctrine affects or modifies only the effects of the unconstitutional law, not the unconstitutional law itself. Thus, applying the operative fact doctrine to the

present case, the Cityhood Laws remain unconstitutional because they violate Section 10, Article X of the Constitution. However, the effects of the implementation of the Cityhood Laws **prior to the declaration of their nullity**, such as the payment of salaries and supplies by the "new cities" or their issuance of licenses or execution of contracts, may be recognized as valid and effective. This does not mean that the Cityhood Laws are valid for they remain void. Only the effects of the implementation of these unconstitutional laws are left undisturbed as a matter of equity and fair play to innocent people who may have relied on the presumed validity of the Cityhood Laws prior to the Court's declaration of their unconstitutionality.

4. ID.; ID.; EQUAL PROTECTION CLAUSE; VIOLATED WHEN THE REQUIREMENTS FOR THE CLASSIFICATION IS LIMITED TO EXISTING CONDITIONS ONLY; PRESENT IN CASE AT BAR.— As the Court held in the 18 November 2008 Decision, there is no substantial distinction between municipalities with pending cityhood bills in the 11th Congress and municipalities that did not have pending bills. The mere pendency of a cityhood bill in the 11th Congress is not a material difference to distinguish one municipality from another for the purpose of the income requirement. **The pendency of a cityhood bill in the 11th Congress does not affect or determine the level of income of a municipality.** Municipalities with pending cityhood bills in the 11th Congress might even have lower annual income than municipalities that did not have pending cityhood bills. **In short, the classification criterion — mere pendency of a cityhood bill in the 11th Congress — is not rationally related to the purpose of the law which is to prevent fiscally non-viable municipalities from converting into cities.** Moreover, the fact of pendency of a cityhood bill in the 11th Congress limits the exemption to a specific condition existing at the time of passage of RA 9009. **That specific condition will never happen again. This violates the requirement that a valid classification must not be limited to existing conditions only.** x x x In addition, limiting the exemption only to the 16 municipalities violates the requirement that the classification must apply to all similarly situated. Municipalities with the same income as the 16 respondent municipalities cannot convert into cities, while the 16 respondent municipalities can. Clearly, as worded, the exemption provision found in the Cityhood Laws,

even if it were written in Section 450 of the Local Government Code, would still be unconstitutional for violation of the equal protection clause.

5. REMEDIAL LAW; MOTIONS; TIE-VOTE ON A MOTION FOR RECONSIDERATION; IF THE VOTING OF THE COURT *EN BANC* RESULTS IN A TIE, THE MOTION FOR RECONSIDERATION IS DEEMED DENIED; SUSTAINED. – If the voting of the Court *en banc* results in a tie, the motion for reconsideration is deemed denied. **The Court's prior majority action on the main decision stands affirmed.** This clarificatory Resolution applies to **all cases heard by the Court *en banc***, which includes not only cases involving the constitutionality of a law, but also, as expressly stated in Section 4(2), Article VIII of the Constitution, "**all other cases which under the Rules of Court are required to be heard *en banc***."

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

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; DOCTRINE OF IMMUTABILITY OF JUDGMENTS; APPLIES ONLY TO FINAL AND EXECUTORY DECISIONS.— It is settled that the doctrine of immutability of judgments necessarily applies only to final and executory decisions. Before such finality, a court has plenary power to alter, modify or altogether set aside its own decision. In fact, the power of the Court to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that it itself has already declared the judgment to be final.

2. POLITICAL LAW; LEGISLATIVE DEPARTMENT; THE PLENARY POWER OF CONGRESS TO CREATE POLITICAL SUBDIVISION INCLUDES A LESSER POWER TO REQUIRE A MENU OF CRITERIA AND STANDARDS FOR THEIR CREATION; EXPLAINED.— If only to emphasize the point, the word "code" in the cited constitutional provision refers to a law Congress enacts in line with its plenary power to create local political subdivisions. As was said in the December 21, 2009 Decision—but without going presently into the qualificatory details therein spelled out–-the only conceivable reason why the Constitution employs the clause "in accordance with the criteria established in the local

government code" is to lay stress that it is Congress alone, and no other, which can define, prescribe and impose the criteria. The imposition may be effected either in a consolidated set of laws or a single-subject enactment, like RA 9009. And provided the imperatives of the equal protection clause are not transgressed, an exemption from the imposition may be allowed, just like the cityhood laws each of which contained the following provision: "Exemption from [RA] No. 9009. – The City of x x x shall be exempted from the income requirement prescribed under Republic Act No. 9009." I find it rather startling, therefore, that the majority opinion, without so much as taking stock of the legislative history of the 16 Cityhood Laws in relation to RA 9009, at least to determine the intent of the law, would conclude that Congress "exceeded and abused its law-making power" when it enacted the said cityhood laws as an exception to RA 9009. It cannot be emphasized enough that if Congress has the plenary power to create political units, it surely can exercise the lesser power of requiring a menu of criteria and standards for their creation. As it is, the amendatory RA 9009 increasing the codified income requirement from Php 20 million to Php 100 million is really no different from the enactment of any of the Cityhood Law exempting the unit covered thereby from the codified standards. x x x Under our system of government, it is Congress that for the most part is possessed with authority to balance clashing interests of different local political subdivisions and thereafter draw the line and set policy directions and choices responsive to their fiscal demands and needs. And to borrow from *Quinto v. Comelec*, "the constitutionality of the law must be sustained even if the reasonableness of the classification is 'fairly debatable.' As long as 'the bounds of reasonable choice' are not exceeded, courts must defer to the legislative judgment." This is as it should be for courts ought not to be delving into the wisdom of the congressional classification, if reasonable, or the motivation underpinning the classification.

3. ID.; CONSTITUTIONAL LAW; EQUAL PROTECTION CLAUSE; NOT VIOLATED BY AN ENACTMENT BASED ON REASONABLE CLASSIFICATION; FACTORS TO CONSIDER; SATISFIED IN CASE AT BAR.— The majority's contention—that the exemption from the income requirement accorded by the Cityhood Laws to respondent cities is unconstitutional, being violative of the equal protection clause–

does not commend itself for concurrence. As articulated in the December 21, 2009 Decision, the equal protection clause is not violated by an enactment based on reasonable classification, the reasonableness factor being met when the classification: (1) rests on substantial distinctions; (2) is germane to the purpose of the law; (3) is not limited to existing conditions only; and (4) applies equally to all members of the same class. As then amply explained in the said Decision, all these requisites have been met by the laws assailed in this proceeding as arbitrary and discriminatory under the equal protection clause. And I presently reiterate my submission that the exemption of respondent LGUs from the PhP 100 million income requirement was meant to reduce the inequality brought about by the passage of the amendatory RA 9009, which, from the records, appears to have been enacted after the affected LGUs, with pending cityhood bills, had qualified under the original PhP 20 million income norm.

APPEARANCES OF COUNSEL

Puno & Puno for petitioners.
Ricardo Bering for Cities of Carcar & El Salvador.
Benjamin Paradela Uy for Tandag.
Lionel A. Titong for Municipality of Borongan.
Noel T. Tiampong for Municipalities of Matbalogan, Samar 7 Lamitan, Basilan.
Rodolfo R. Zabella, Jr. for Municipality of Tayabas.
Estelito Mendoza for Cities of Baybay Bogo (Cebu), *et al.*
Immanuel L. Garde for Himamaylan City.
Vincent V. Dangaso for Gingoog City.
Cicero V. Malate, O.D. for petitioner-intervenor Iriga City.
Marlo C. Bangoro for the City Government of Pagadian.
Kara Aimee M. Quevenco for petitioner-intervenor City of Silay.
Francisco C. Geronilla for Mayor of Mati.
Francisco V. Mijares, Jr. & Socorro D'Marie T. Inting for Municipality of Guihulngan.
Randy B. Bulwayan for Municipality of Tabuk.
Jose Augusto J. Salvacion for City of Tayabas.

Ferdinand H. Ebarle for intevenor Association of Bayugan City Employees.

R E S O L U T I O N

CARPIO, *J.*:

For resolution are (1) the *ad cautelam* motion for reconsideration and (2) motion to annul the Decision of 21 December 2009 filed by petitioners League of Cities of the Philippines, *et al*. and (3) the *ad cautelam* motion for reconsideration filed by petitioners-in-intervention Batangas City, Santiago City, Legazpi City, Iriga City, Cadiz City, and Oroquieta City.

On 18 November 2008, the Supreme Court *En Banc*, by a majority vote, struck down the subject 16 Cityhood Laws for violating Section 10, Article X of the 1987 Constitution and the equal protection clause. On 31 March 2009, the Supreme Court *En Banc*, again by a majority vote, denied the respondents' first motion for reconsideration. On 28 April 2009, the Supreme Court *En Banc*, by a *split* vote, denied the respondents' second motion for reconsideration. Accordingly, the 18 November 2008 Decision became final and executory and was recorded, in due course, in the Book of Entries of Judgments on 21 May 2009.

However, after the finality of the 18 November 2008 Decision and without any exceptional and compelling reason, the Court *En Banc* unprecedentedly reversed the 18 November 2008 Decision by upholding the constitutionality of the Cityhood Laws in the Decision of 21 December 2009.

Upon reexamination, the Court finds the motions for reconsideration meritorious and accordingly reinstates the 18 November 2008 Decision declaring the 16 Cityhood Laws unconstitutional.

A. Violation of Section 10, Article X of the Constitution

Section 10, Article X of the 1987 Constitution provides:

No province, city, municipality, or *barangay* shall be created, divided, merged, abolished or its boundary substantially altered, **except in accordance with the criteria established in the local government code** and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. (Emphasis supplied)

The Constitution is clear. The creation of local government units must follow the **criteria established in the Local Government Code** and not in any other law. There is only one Local Government Code.[1] The Constitution requires Congress to stipulate in the Local Government Code all the criteria necessary for the creation of a city, including the conversion of a municipality into a city. Congress cannot write such criteria in any other law, like the Cityhood Laws.

The clear intent of the Constitution is to insure that the creation of cities and other political units must follow **the same uniform, non-discriminatory criteria found solely in the Local Government Code**. Any derogation or deviation from the criteria prescribed in the Local Government Code violates Section 10, Article X of the Constitution.

RA 9009 amended Section 450 of the Local Government Code to increase the income requirement from ₱20 million to ₱100 million for the creation of a city. **This took effect on 30 June 2001. Hence, from that moment the Local Government Code required that any municipality desiring to become a city must satisfy the ₱100 million income requirement**. Section 450 of the Local Government Code, as amended by RA 9009, does not contain any exemption from this income requirement.

In enacting RA 9009, Congress did not grant any exemption to respondent municipalities, even though their cityhood bills were pending in Congress when Congress passed RA 9009. The Cityhood Laws, all enacted ***after*** the effectivity of RA 9009, explicitly exempt respondent municipalities from the increased income requirement in Section 450 of the Local

[1] Republic Act No. 7160, as amended.

Government Code, as amended by RA 9009. **Such exemption clearly violates Section 10, Article X of the Constitution and is thus patently unconstitutional. To be valid, such exemption must be written in the Local Government Code and not in any other law, including the Cityhood Laws.**

RA 9009 is not a law different from the Local Government Code. Section 1 of RA 9009 pertinently provides: "**Section 450 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, is hereby amended** to read as follows: x x x." RA 9009 amended Section 450 of the Local Government Code. **RA 9009, by amending Section 450 of the Local Government Code, embodies the new and prevailing Section 450 of the Local Government Code.** Considering the Legislature's primary intent to curtail "the mad rush of municipalities wanting to be converted into cities," RA 9009 increased the income requirement for the creation of cities. To repeat, RA 9009 is not a law different from the Local Government Code, as it expressly amended Section 450 of the Local Government Code.

The language of RA 9009 is plain, simple, and clear. Nothing is unintelligible or ambiguous; not a single word or phrase admits of two or more meanings. RA 9009 amended Section 450 of the Local Government Code of 1991 by increasing the income requirement for the creation of cities. There are no exemptions from this income requirement. Since the law is clear, plain and unambiguous that any municipality desiring to convert into a city must meet the increased income requirement, there is no reason to go beyond the letter of the law. Moreover, where the law does not make an exemption, the Court should not create one.[2]

B. Operative Fact Doctrine

Under the operative fact doctrine, the law is recognized as unconstitutional but the effects of the unconstitutional law, prior to its declaration of nullity, may be left undisturbed as a matter

[2] See *Francisco v. Court of Appeals*, 313 Phil. 241, 258 (1995).

of equity and fair play. In fact, the invocation of the operative fact doctrine is an admission that the law is unconstitutional.

However, the minority's novel theory, invoking the operative fact doctrine, is that the enactment of the Cityhood Laws and the functioning of the 16 municipalities as new cities with new sets of officials and employees **operate to contitutionalize the unconstitutional Cityhood Laws.** This novel theory misapplies the operative fact doctrine and sets a gravely dangerous precedent.

Under the minority's novel theory, an unconstitutional law, if already implemented prior to its declaration of unconstitutionality by the Court, can no longer be revoked and its implementation must be continued despite being unconstitutional. This view will open the floodgates to the wanton enactment of unconstitutional laws and a mad rush for their immediate implementation before the Court can declare them unconstitutional. This view is an open invitation to serially violate the Constitution, and be quick about it, lest the violation be stopped by the Court.

The operative fact doctrine is a rule of equity. As such, it must be applied as **an exception to the general rule that an unconstitutional law produces no effects.** It can never be invoked to validate as constitutional an unconstitutional act. In *Planters Products, Inc. v. Fertiphil Corporation*,[3] the Court stated:

> **The general rule is that an unconstitutional law is void. It produces no rights, imposes no duties and affords no protection.** It has no legal effect. It is, in legal contemplation, inoperative as if it has not been passed. Being void, Fertiphil is not required to pay the levy. All levies paid should be refunded in accordance with the general civil code principle against unjust enrichment. The general rule is supported by Article 7 of the Civil Code, which provides:
>
> ART. 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse or custom or practice to the contrary.

[3] G.R. No. 166006, 14 March 2008, 548 SCRA 485, 516-517.

> When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.
>
> **The doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot always be ignored. The past cannot always be erased by a new judicial declaration.**
>
> The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. Thus, it was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy or would put in limbo the acts done by a municipality in reliance upon a law creating it. (Emphasis supplied)

The operative fact doctrine never validates or constitutionalizes an unconstitutional law. Under the operative fact doctrine, the unconstitutional law remains unconstitutional, but the **effects** of the unconstitutional law, prior to its judicial declaration of nullity, may be left undisturbed as a matter of equity and fair play. In short, the operative fact doctrine affects or modifies only the effects of the unconstitutional law, not the unconstitutional law itself.

Thus, applying the operative fact doctrine to the present case, the Cityhood Laws remain unconstitutional because they violate Section 10, Article X of the Constitution. However, the effects of the implementation of the Cityhood Laws **prior to the declaration of their nullity**, such as the payment of salaries and supplies by the "new cities" or their issuance of licenses or execution of contracts, may be recognized as valid and effective. This does not mean that the Cityhood Laws are valid for they remain void. Only the effects of the implementation of these unconstitutional laws are left undisturbed as a matter of equity and fair play to innocent people who may have relied on the presumed validity of the Cityhood Laws prior to the Court's declaration of their unconstitutionality.

C. Equal Protection Clause

As the Court held in the 18 November 2008 Decision, there is no substantial distinction between municipalities with pending cityhood bills in the 11th Congress and municipalities that did not have pending bills. The mere pendency of a cityhood bill in the 11th Congress is not a material difference to distinguish one municipality from another for the purpose of the income requirement. **The pendency of a cityhood bill in the 11th Congress does not affect or determine the level of income of a municipality.** Municipalities with pending cityhood bills in the 11th Congress might even have lower annual income than municipalities that did not have pending cityhood bills. **In short, the classification criterion — mere pendency of a cityhood bill in the 11th Congress — is not rationally related to the purpose of the law which is to prevent fiscally non-viable municipalities from converting into cities.**

Moreover, the fact of pendency of a cityhood bill in the 11th Congress limits the exemption to a specific condition existing at the time of passage of RA 9009. **That specific condition will never happen again. This violates the requirement that a valid classification must not be limited to existing conditions only.** In fact, the minority concedes that "the conditions (pendency of the cityhood bills) adverted to can no longer be repeated."

Further, the exemption provision in the Cityhood Laws gives the 16 municipalities a unique advantage based on an arbitrary date — the filing of their cityhood bills before the end of the 11th Congress – as against all other municipalities that want to convert into cities after the effectivity of RA 9009.

In addition, limiting the exemption only to the 16 municipalities violates the requirement that the classification must apply to all similarly situated. Municipalities with the same income as the 16 respondent municipalities cannot convert into cities, while the 16 respondent municipalities can. Clearly, as worded, the exemption provision found in the Cityhood Laws, even if it were written in Section 450 of the Local Government Code, would still be unconstitutional for violation of the equal protection clause.

D. Tie-Vote on a Motion for Reconsideration

Section 7, Rule 56 of the Rules of Court provides:

SEC. 7. *Procedure if opinion is equally divided.* – Where the court *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall again be deliberated on, and if after such deliberation no decision is reached, the original action commenced in the court shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and **on all incidental matters, the petition or motion shall be denied.** (Emphasis supplied)

The *En Banc* Resolution of 26 January 1999 in A.M. No. 99-1-09-SC, reads:

A MOTION FOR THE CONSIDERATION OF A DECISION OR RESOLUTION OF THE COURT *EN BANC* OR OF A DIVISION MAY BE GRANTED UPON A VOTE OF A MAJORITY OF THE MEMBERS OF THE *EN BANC* OR OF A DIVISION, AS THE CASE MAY BE, WHO ACTUALLY TOOK PART IN THE DELIBERATION OF THE MOTION.

IF THE VOTING RESULTS IN A TIE, THE MOTION FOR RECONSIDERATION IS DEEMED DENIED. (Emphasis supplied)

The clear and simple language of the clarificatory *en banc* Resolution requires no further explanation. If the voting of the Court *en banc* results in a tie, the motion for reconsideration is deemed denied. **The Court's prior majority action on the main decision stands affirmed.**[4] This clarificatory Resolution applies to **all cases heard by the Court *en banc***, which includes not only cases involving the constitutionality of a law, but also, as expressly stated in Section 4(2), Article VIII of the Constitution, "**all other cases which under the Rules of Court are required to be heard *en banc***."

[4] In *Fortich v. Corona*, G.R. No. 131457, 19 August 1999, 312 SCRA 751, 766, retired Justice Jose Melo, in his Separate Opinion on the motion for reconsideration, stated that **"in our own Court *En Banc*, if the voting is evenly split, on a 7-7 vote, one (1) slot vacant, or with one (1) justice inhibiting or disqualifying himself, the motion (for reconsideration) shall, of course, not be carried because that is the end of the line."** (Emphasis supplied)

The 6-6 tie-vote by the Court *en banc* on the second motion for reconsideration necessarily resulted in the denial of the second motion for reconsideration. Since the Court was evenly divided, there could be no reversal of the 18 November 2008 Decision, *for a tie-vote cannot result in any court order or directive*.[5] The judgment stands in full force.[6] **Undeniably, the 6-6 tie-vote did not overrule the prior majority *en banc* Decision of 18 November 2008, as well as the prior majority *en banc* Resolution of 31 March 2009 denying reconsideration.** The tie-vote on the second motion for reconsideration is not the same as a tie-vote on the main decision where there is no prior decision. Here, the tie-vote plainly signifies that there is no majority to overturn the prior 18 November 2008 Decision and 31 March 2009 Resolution, and thus the second motion for reconsideration must be denied.

Further, the tie-vote on the second motion for reconsideration did not mean that the present cases were left undecided because there remain the Decision of 18 November 2008 and the Resolution of 31 March 2009 where a majority of the Court *en banc* concurred in declaring the unconstitutionality of the sixteen Cityhood Laws. **In short, the 18 November 2008 Decision and the 31 March 2009 Resolution, which were both reached with the concurrence of a majority of the Court *en banc*, are not reconsidered but stand affirmed.**[7] **These prior majority actions of the Court *en banc* can only be overruled by a new majority vote, not a tie-vote because a tie-vote cannot overrule a prior affirmative action.**

The denial, by a split vote, of the second motion for reconsideration inevitably rendered the 18 November 2008

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[5] Michael Coenen, *Original Jurisdiction Deadlocks*, Yale Law Journal, March, 2009, 118 Yale L.J. 1003, citing *Durant v. Essex Co.*, 74 U.S. (7 Wall.) 107, 112 (1868).

[6] *Id.*

[7] In *Defensor-Santiago v. COMELEC*, G.R. No. 127325, the Court, by a vote of 6-6 with one (1) justice inhibiting himself and another justice refusing to rule on the ground that the issue was not ripe for adjudication, denied the motion for reconsideration. The case of *Lambino v. COMELEC*, G.R. Nos. 174153 and 174299, cited *Defensor-Santiago v. COMELEC*.

Decision final. In fact, in its Resolution of 28 April 2009, denying the second motion for reconsideration, the Court *en banc* reiterated that no further pleadings shall be entertained and stated that entry of judgment be made in due course.

The dissenting opinion stated that "a deadlocked vote of six is not a majority and a non-majority does not constitute a rule with precedential value."[8]

Indeed, a tie-vote is a non-majority – a non-majority which cannot overrule a prior affirmative action, that is the 18 November 2008 Decision striking down the Cityhood Laws. In short, the 18 November 2008 Decision stands affirmed. And assuming a non-majority lacks any precedential value, the 18 November 2008 Decision, which was unreversed as a result of the tie-vote on the respondents' second motion for reconsideration, nevertheless remains binding on the parties.[9]

Conclusion

Section 10, Article X of the Constitution expressly provides that **"no x x x city shall be created x x x except in accordance with the criteria established in the local government code."** This provision can only be interpreted in one way, that is, all the criteria for the creation of cities must be embodied exclusively in the Local Government Code. In this case, the Cityhood Laws, which are unmistakably laws other than the Local Government Code, provided an exemption from the increased income requirement for the creation of cities under Section 450 of the Local Government Code, as amended by RA 9009. Clearly, the Cityhood Laws contravene the letter and intent of Section 10, Article X of the Constitution.

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[8] See Chief Justice Puno's separate opinion in *Lambino v. COMELEC*, G.R. Nos. 174153 and174299, 25 October 2006, 505 SCRA 160.

[9] See Recusals and the "Problem" of an Equally Divided Supreme Court by Ryan Black and Lee Epstein, (http://epstein.law.northwestern.edu/research/recusal.pdf), citing Durant, 74 U.S. at 109; Egger, (Student Author, *Court of Appeals Review of Agency Action: The Problem of En Banc Ties*, 100 Yale L.J. 471 [1990]); Reynolds & Young, Equal Divisions in the Supreme Court: History, Problems and Proposals, 62 N.C. L. Rev. 29, 31 (1983).

Adhering to the explicit prohibition in Section 10, Article X of the Constitution does not cripple Congress' power to make laws. In fact, Congress is not prohibited from amending the Local Government Code itself, as what Congress did by enacting RA 9009. Indisputably, the act of amending laws comprises an integral part of the Legislature's law-making power. The unconstitutionality of the Cityhood Laws lies in the fact that Congress provided an exemption contrary to the express language of the Constitution that "[n]o x x x city x x x shall be created except in accordance with the criteria established in the local government code." In other words, Congress exceeded and abused its law-making power, rendering the challenged Cityhood Laws void for being violative of the Constitution.

WHEREFORE, we *GRANT* the motions for reconsideration of the 21 December 2009 Decision and *REINSTATE* the 18 November 2008 Decision declaring *UNCONSTITUTIONAL* the Cityhood Laws, namely: Republic Act Nos. 9389, 9390, 9391, 9392, 9393, 9394, 9398, 9404, 9405, 9407, 9408, 9409, 9434, 9435, 9436, and 9491.

We *NOTE* petitioners' motion to annul the Decision of 21 December 2009.

SO ORDERED.

Carpio Morales, Brion, Peralta, Villarama, Jr., Mendoza, and *Sereno, JJ.,* concur.

Corona, C.J., Leonardo-de Castro, Bersamin, Abad, and *Perez, JJ.,* join the dissent of *J.* Velasco, Jr.

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

Nachura and *Del Castillo, JJ.,* no part.

D I S S E N T I N G O P I N I O N

VELASCO, JR., *J.*:

As may be recalled, the Court, by Decision[1] dated November 18, 2008, declared as unconstitutional the sixteen (16) cityhood laws, namely Republic Act Nos. (RA) 9389, 9390, 9391, 9392, 9393, 9394, 9398, 9404, 9405, 9407, 9408, 9409, 9434, 9435, 9436, and 9491. By Decision of December 21, 2009, however, the Court declared as valid and constitutional the same Cityhood Laws, reversing, in the process, the November 18, 2008 Decision and setting aside three of its subsequent incidental orders issued after November 18, 2008.[2]

In this recourse, main petitioners pray, without prejudice to the resolution of their motion to annul the December 21, 2009 Decision, that the Court reconsider the same decision and declare the aforementioned 16 Cityhood Laws unconstitutional. As in their underlying petition for prohibition, they latched their case primarily on two grounds: *First*, the Cityhood Laws sought to create cities which do not meet one of the criteria, or, to be precise, the verifiable income norm stipulated in Section 450 of the Local Government Code (LGC) of 1991, as amended by RA 9009.[3] *Second*, the said Cityhood Laws, by granting a different treatment to respondent local government units (LGUs), via an exemption from the standard PhP 100 million floor income

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[1] Penned by Sr. Justice Antonio T. Carpio, the Decision was promulgated on a vote of 6-5. Justices Quisumbing (now ret.), Austria-Martinez (now ret.), Carpio-Morales, Velasco, Jr., and Brion concurred. Justices Corona, Azcuna (now ret.), Chico-Nazario (now ret.), and Leonardo de Castro joined the Dissenting Opinion of Justice Ruben T. Reyes (now ret.)

[2] Those who voted to reverse the November 18, 2008 Decision were Justices Corona (now Chief Justice), Velasco, Jr. (*ponente*), Leonardo de Castro, Bersamin, Abad and Villarama, Jr. Justice Carpio dissented and the following joined him in his Dissenting Opinion: Justices Carpio Morales, Brion and Peralta. Justice Mariano del Castillo took no part.

[3] As amended by RA 9009, Sec. 450 of the LGC of 1991 provides that a municipality may be converted into a component city if it has a certified locally generated average annual income of at least PhP 100 million for the last two (2) consecutive years based on 2000 constant prices.

requirement set under RA 9009, infringe the equal protection clause of the Constitution. As argued, the circumstance that the Cityhood Laws in question were filed and deliberated upon in the 11th and/or 12th Congress, or before the enactment of RA 9009 during the 12th Congress, does not constitute a substantive distinction exacted under the equal protection guarantee that would warrant a preferential treatment of respondent LGUs.

In their motion to annul, petitioner League of Cities of the Philippines (LCP), *et al*. would urge the Court to declare as void its December 21, 2009 Decision on the argument that it had no jurisdiction to issue the same, the earlier November 18, 2008 decision being now immutable, having in the meanwhile become final and executory, as in fact an entry of judgment has been made thereon.

For their part, intervening petitioners, in their separate, but similarly worded *Manifestation with Supplemental Ad Cautelam Motion for Reconsideration*, adopted *in toto* the arguments raised in main petitioners' motion to annul and in the latter's *ad cautelam* motion for consideration. All expressed dismay over the consequent reduction of their share in the internal revenue allotment (IRA), since more cities will partake of the internal revenue set aside for all cities under Sec. 285 of the LGC of 1991.[4]

In a bid to have the December 21, 2009 Decision declared as a nullity, petitioners argue, as a preliminary consideration, that the Court no longer has jurisdiction to modify, reconsider or set aside a final and executory, *ergo* unalterable judgment, like the November 18, 2008 Decision.

The majority finds the motions for reconsideration meritorious and accordingly reinstates the Court's November 18, 2008 Decision declaring the 16 Cityhood Laws unconstitutional.

I regret my inability to join the majority.

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[4] Section 285 of the 1991 LGC provides: *Allocation to Local Government Units*. — The share of [LGUs] in the [IRA] shall be allocated in the following manner:

Contrary to the majority's posture, the subject November 18, 2008 Decision never really became final and executory, albeit it has been recorded in the Book of Entries of Judgments on May 21, 2009. It is settled that the doctrine of immutability of judgments necessarily applies only to final and executory decisions. Before such finality, a court has plenary power to alter, modify or altogether set aside its own decision. In fact, the power of the Court to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that it itself has already declared the judgment to be final.[5] This critical issue of finality—inclusive of the application of Sec. 7, Rule 56 of the Rules of Court[6] and A.M. No. 99-1-09-SC[7] on deadlock voting, read in conjunction with the constitutional voting requirement needed for a declaration of unconstitutionality of

(a) Provinces — Twenty-three percent (23%);

(b) Cities — Twenty-three percent (23%);

(c) Municipalities — Thirty-four percent (34%); and

(d) *Barangays* — Twenty percent (20%)

Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:

(a) Population — Fifty percent (50%);

(b) Land Area — Twenty-five percent (25%); and

(c) Equal sharing — Twenty-five percent (25%)

[5] *Manotok v. Barque*, G.R. Nos. 162335 & 162605, December 18, 2008; citing *Ginete v. Court of Appeals*, 292 SCRA 38 (1988).

[6] SEC. 7. *Procedure if opinion is equally divided*. – Where the court *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall again be deliberated on, and if after such deliberation no decision is reached, the original action commenced in the court shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied.

[7] SEC. 7. *Procedure if opinion is equally divided*. – Where the court *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall again be deliberated on, and if after such deliberation no decision is reached, the original action commenced in the court shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied.

laws[8]—has been discussed in some detail in the December 21, 2009 Decision. I need not delve at length on the same issue again. Suffice it to hark back on some highlights of that disposition: Before the December 21, 2009 Decision, the inconclusive 6-6 tie vote reflected in the April 28, 2009 Resolution[9] of the Court resolving the second motion for reconsideration of the November 18, 2008 Decision—was the last vote on the issue of the validity or invalidity of cityhood laws.[10] Significantly, while the April 28, 2009 Resolution denied, for being a "prohibited pleading," the second motion for reconsideration covered thereby, for which reason an entry of judgment for the November 18, 2008 Decision was ordered made, the Court, in its Resolution of June 2, 2009,[11] reconsidered the April 28, 2009 Resolution.[12]

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[8] Sec. 4 (2) [Art. VIII]. All cases involving the constitutionality of a treaty, international or executive agreement, or law shall be heard by the Supreme Court *en banc*, x x x shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

[9] The Resolution partly reads:

By a vote of 6-6, the Motion for Reconsideration of the Resolution of 31 March 2009 [denying respondent cities' motion for reconsideration of the November 18, 2008] is denied for lack of merit. The motion is denied since there is no majority that voted to overturn the Resolution of 31 March 2009.

The Second Motion for Reconsideration of the Decision of December 18, 2008 is Denied for being a prohibited pleading. x x x No further pleading shall be entertained. Let entry of judgment be made in due course.

Justice Presbitero J. Velasco, Jr. wrote a Dissenting Opinion joined by [five others] x x x.

[10] The second motion for reconsideration dated April 14, 2009 which was disposed of in the April 28, 2009 Resolution dealt with the issue of constitutionality of the cityhood laws and addressed the grounds upon which the November 18, 2008 Decision was predicated.

[11] In part the Resolution reads: "In the present case, the Court voted on the second motion for reconsideration filed by respondent cities. In effect, the Court allowed the filing of the second motion for reconsideration. Thus the second motion for reconsideration was no longer a prohibited pleading x x x considering the finality of the 18 November 2008 Decision which was recorded in the Book of Entries."

[12] Respondents filed on July 7, 2009 a Motion for Reconsideration of the Resolution of June 2, 2009.

In net effect, the second motion for reconsideration of the November 18, 2008 Decision was no longer considered a prohibitive pleading. Several motions and pleadings followed. In all, then, the issuance of the entry of judgment for the November 18, 2008 Decision was precipitate not only because several incidents were pending before the Court when the entry was made on May 21, 2009, but in view of the 6-6 tie vote on the second motion for reconsideration of the November 18, 2008 ruling. That voting result obviously does not reflect the "[decision] x x x of a majority of the Members of the [Court *en banc*] who actually took part in the deliberations on the issues of the case and voted thereon," contemplated in Sec. 4 (2), Art. VIII of the Constitution.[13] A deadlocked vote of six is not a majority and a non-majority does not constitute a rule with precedential value.[14]

For sure, the issuance of an entry of judgment, by itself, does not, as the majority suggests, bar the Court, under any and all instances, from considering further submissions and from altering, if it must to avoid grave injustice, a decision covered thereby. For, the recall of entries of judgment for the purpose of reevaluating a case, albeit rare, is hardly a novelty. The Court has in the past bent backwards and recalled entries of judgment in the interest of justice. [15] For it is in relaxing the rules that the Court oftentimes serves the ends of justice and equity based on substantial and meritorious grounds.

Albeit not touched upon in the Resolution subject of this Dissent, petitioners have brought up the question of the appropriateness of the participation of certain members of the Court, particularly with respect to the Decision subject of the motion to annul. This Dissent will endeavor to address and perchance write *finis* to this issue.

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[13] *Id*.

[14] Justice Puno's separate opinion in *Lambino v. COMELEC*, 505 SCRA 160 (2006).

[15] *Tan Tiac Chiong v. Hon. Cosico*, 434 Phil. 753 (2002); *Manotok v. Barque*, *supra*.

To petitioners, the votes cast by Justices Diosdado M. Peralta, Lucas P. Bersamin, Roberto A. Abad and Martin S. Villarama, Jr., for or against the December 21, 2009 Decision, should be excluded. For as argued, under Sec. 4(2), Article VIII of the Constitution, all cases involving the constitutionality of law shall be heard by the Court *en banc* and "shall be decided with the **concurrence of a majority** of the Members **who actually took part in the deliberations on the issues in the case and voted thereon**." Following what to the Court is petitioners' thesis, applying the aforecited Section 4(2), those who may participate and vote on the December 21, 2009 Decision shall be limited to those who actually took part in the deliberations on the issues on the case and voted thereon,[16] the reference being to the members of the Court who actually took part in the November 18, 2008 Decision and voted thereon.[17] And the four (4) aforementioned members of the Court did not participate in the deliberations of the issues leading to the issuance of the November 18, 2008 Decision simply because they were not yet members of the Court.[18]

Petitioners' above posture is flawed by the logic and premises holding it together. For, it assumes that the constitutionality of the Cityhood Laws and the arguments for and against the proposition were not put in issue, discussed, resolved and voted upon in the December 21, 2009 Decision. The sheer absurdity of this assumption needs no belaboring. But the bottom line is that said decision, for reasons articulated therein, expressly declared the Cityhood Laws to be valid and constitutional.

As a matter of record,[19] eleven (11) members of the Court actually took part in the deliberation on the issues presented in

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[16] Petitioners' Petition to Annul, pp. 5-7.

[17] *Id.* at 6. Justice Peralta voted in the Resolution of March 31, 2009 resolving the December 9, 2008 first motion for reconsideration of the November 18, 2008 Decision.

[18] Justice Peralta, the most senior of the five, was appointed on January 14, 2009.

[19] *Rollo* (G.R. No. 178056), pp. 2764-2765.

G.R. Nos. 176951, 177499 and 178056 and voted on the November 18, 2008 Decision.[20] Three (3) members took no part,[21] while one (1) was on official leave.[22] As of December 21, 2009, only **six (6)**[23] of the original eleven (11) participating and voting members remained with the Court, the five (5) others[24] having meanwhile retired. If the participants in the December 21, 2009 Decision were to be limited to the members of the Court who actually took part in the deliberations of the November 18, 2008 Decision, as petitioners in all seriousness now contend, then only the six (6) members referred to above could have had validly participated and voted on the Decision of December 21, 2009. That would not even constitute a quorum of the *en banc* Court, as aptly pointed out by respondents.[25] And for sure, the same six (6) members could not even pass upon the main and intervening petitioners' motion for reconsideration, if their position were to be pursued to its logical conclusion.

Now to the substantive merits of the case.

The majority would insist that a city, as prescribed by Art. X, Sec. 10[26] of the Constitution, may be created only in accordance with the criteria established in the LGC. In specific terms, this means that any cityhood law must meet all criteria, such as the income criterion, presently set forth in Sec. 450 of the LGC of

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[20] Justices Quisumbing, Carpio, Austria-Martinez, Carpio Morales, Velasco, Jr. and Brion, voting against the constitutionality; and Justices Corona, Azcuna Chico-Nazario, Leonardo-de Castro and Reyes, voting for the constitutionality.

[21] Chief Justice Puno and Justice Nachura.

[22] Justice Santiago.

[23] Justices Carpio, Corona, Carpio Morales, Velasco, Jr., Brion, and Leonardo-de Castro.

[24] Justices Quisumbing, Chico Nazario, Azcuna, Austria Martinez, and Reyes.

[25] Comment of respondent-cities on petitioner LCP's motion to annul, p. 21.

[26] Section 10. No province [or] city x x x shall be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established **in the local government code** and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. (Emphasis supplied.)

1991, as amended by RA 9009. Congress cannot, so the majority claims, write such criteria in any other law.[27]

I disagree. If only to emphasize the point, the word "code" in the cited constitutional provision refers to a law Congress enacts in line with its plenary power to create local political subdivisions. As was said in the December 21, 2009 Decision––but without going presently into the qualificatory details therein spelled out—the only conceivable reason why the Constitution employs the clause "in accordance with the criteria established in the local government code" is to lay stress that it is Congress alone, and no other, which can define, prescribe and impose the criteria. The imposition may be effected either in a consolidated set of laws or a single-subject enactment, like RA 9009. And provided the imperatives of the equal protection clause are not transgressed, an exemption from the imposition may be allowed, just like the cityhood laws each of which contained the following provision: "Exemption from [RA] No. 9009. – The City of x x x shall be exempted from the income requirement prescribed under Republic Act No. 9009." I find it rather startling, therefore, that the majority opinion, without so much as taking stock of the legislative history of the 16 Cityhood Laws in relation to RA 9009, at least to determine the intent of the law, would conclude that Congress "exceeded and abused its law-making power"[28] when it enacted the said cityhood laws as an exception to RA 9009. It cannot be emphasized enough that if Congress has the plenary power to create political units, it surely can exercise the lesser power of requiring a menu of criteria and standards for their creation. As it is, the amendatory RA 9009 increasing the codified income requirement from Php 20 million to Php 100 million is really no different from the enactment of any of the Cityhood Law exempting the unit covered thereby from the codified standards.

The majority's contention—that the exemption from the income requirement accorded by the Cityhood Laws to respondent cities

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[27] Resolution, p. 6.

[28] Majority Resolution, p. 14.

is unconstitutional, being violative of the equal protection clause– does not commend itself for concurrence. As articulated in the December 21, 2009 Decision, the equal protection clause is not violated by an enactment based on reasonable classification, the reasonableness factor being met when the classification: (1) rests on substantial distinctions; (2) is germane to the purpose of the law; (3) is not limited to existing conditions only; and (4) applies equally to all members of the same class.[29] As then amply explained in the said Decision, all these requisites have been met by the laws assailed in this proceeding as arbitrary and discriminatory under the equal protection clause. And I presently reiterate my submission that the exemption of respondent LGUs from the PhP 100 million income requirement was meant to reduce the inequality brought about by the passage of the amendatory RA 9009, which, from the records, appears to have been enacted after the affected LGUs, with pending cityhood bills, had qualified under the original PhP 20 million income norm.

It is maintained that the distinguishing characteristic setting respondent cities apart from other LGUs desirous to be cities, *i.e.*, mere pendency of the cityhood bills in the 11th Congress, would not avail respondent cities any. The differential treatment of respondent LGUs based on that characteristic does not, per the majority, constitute a valid classification because the classification applies only to the conditions prevailing during the 11th Congress, a phenomenon that will not happen again. It may readily be conceded that the conditions adverted to can no longer be repeated. But the scenario thus depicted by the majority would not render the legislative classification unconstitutionally arbitrary. As long as the classifying law is not limited in its application to conditions prevailing as of the time of its enactment, but is intended to apply for all times as long as the contemplated conditions exist, then there is no sufficient ground for invalidation. This is what Congress precisely did, as it in fact applied the classification for as long as the conditions were obtaining. These

[29] Bernas, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, A COMMENTARY* 124 (1996); citing *People v. Cayat*, 68 Phil. 12, 18 (1939).

conditions to repeat are: the corresponding cityhood bill has been filed before the effectivity of RA 9009 and the concerned municipality qualifies for cityhood status under the original version of the 1991 LGC.

The allegation that Congress made, under the premises, an unreasonable classification in favor of a few privileged LGUs cannot be accepted. As respondents aptly observed, the classification was enforced, not on a single instance, but on sixteen (16) instances which spanned several months involving erstwhile municipalities spread across the archipelago, from the municipality of Batac in the North to the municipality of Lamitan, Basilan in Southern Mindanao.

The ensuing excerpts from the December 21, 2009 Decision aptly capture the situation on the ground and should address the majority's equal protection of the law concern:

> Lastly and in connection with the third requisite, the uniform exemption clause would apply to municipalities that had pending cityhood bills before the passage of R.A. No. 9009 and were compliant with the then Sec. 450 of the LGC of 1991 that prescribed an income requirement of ₱20 Million. It is hard to imagine, however, if there are still municipalities out there belonging in context to the same class as the sixteen (16) respondent LGUs. Municipalities which cannot claim as belonging to the same class as the sixteen cannot seek refuge in the cityhood laws. As to them, they have to comply with the ₱100 Million income requirement imposed by R.A. 9009.

The issue voiced by the intervening movant-petitioners about the eventual reduction of their IRA share resulting from the creation of the sixteen (16) respondent cities is a matter worth looking into, but not by the Court, absent proof that the cityhood laws created an arbitrary classification. Under our system of government, it is Congress that for the most part is possessed with authority to balance clashing interests of different local political subdivisions and thereafter draw the line and set policy directions and choices responsive to their fiscal demands and needs. And to borrow from *Quinto v. Comelec*, "the constitutionality of the law must be sustained even if the reasonableness of the classification is 'fairly debatable.' As long as 'the bounds of

reasonable choice' are not exceeded, courts must defer to the legislative judgment."[30] This is as it should be for courts ought not to be delving into the wisdom of the congressional classification, if reasonable, or the motivation underpinning the classification.[31] Yet, wittingly or unwittingly, this seems to be what the majority opinion intends to accomplish in this case. This should not be allowed.

The majority resolution has made much of the invocation in the December 21, 2009 of the operative fact doctrine, stating the observation that the minority has adopted a theory that an unconstitutional law, if already implemented prior to its declaration, can no longer be revoked and its implementation must be continued despite being unconstitutional. In context, the assailed invocation was no more than a recognition that the creation of cities, or at least some of them, pursuant to the Cityhood Laws, has been approved by a majority of the votes cast in the plebiscite in the units affected. And as a result of such approval, official transactions with long term implementability may have been entered into which cannot be easily undone without legal and financial complications. Thus, the advisability on practical consideration, on top of strictly legal grounds consideration, of positing the constitutionality of the Cityhood Laws in question. What the majority deems as a minority did not say that a law otherwise invalid, cannot be invalidated by operation of the operative fact doctrine.

Accordingly**,** I vote to deny the *ad cautelam* motion for consideration and the motion to annul the Decision of the Court dated December 21, 2009 interposed by petitioners League of Cities of the Philippines, *et al*., and the *ad cautelam* motion for reconsideration of the same decision separately filed by the intervening-petitioners Batangas City, Santiago City, Legazpi City, Iriga City, Cadiz City and Oroquieta City.

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[30] *Quinto v. COMELEC*, G.R. No. 189698, February 22, 2010; citing *Newark Superior Officers Ass'n v. City of Newark*, 98 N.J. 212, 227, 486 A. 2d 305 (1985) and other cases.

[31] *Pangilinan v. Malaya*, G.R. No. 104216, August 20, 1993, 225 SCRA 551.

THIRD DIVISION

[A.M. No. P-06-2132. August 25, 2010]

PRESENTATION V. ANOTA, *complainant, vs.* **AGERICO P. BALLES, CLERK OF COURT IV, OFFICE OF THE CLERK OF COURT, MTCC, TACLOBAN CITY, LEYTE,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; UNJUST REFUSAL TO ISSUE CLEARANCE AMOUNTED TO OPPRESSION. — We referred the matter to the Tacloban City Regional Trial Court executive judge for investigation, report and recommendation, upon the recommendation of the Office of the Court Administrator (OCA). The investigating judge conducted several hearings, and based on his conclusion, the OCA, in its Memorandum, ruled that Atty. Balles' acts amounted to oppression. There was no missing court record in Tacloban City MTCC-Branch 1 according to the Court Management Office-OCA's judicial audits in June 2000 and August 2003, and the incumbent MTCC Clerk of Court testified that Mr. Anota had fully accounted for all the money and property under his custody. Thus, the OCA found Atty. Balles' refusal to issue the clearance grossly unjust because Mr. Anota could have used his retirement benefits for his medicine and hospital expenses during his confinement. We concur with the OCA's findings, and would have fully concurred with its recommended sanctions against Atty. Balles, except that: First, on March 28, 2006, Atty. Balles submitted to us a certification that Felicisimo Anota had been cleared of money and property accountabilities; and Second, in 2009, we dismissed Atty. Balles from the service in A.M. No. P-05-2065, entitled "Report on the Financial Audit Conducted on the Books of Accounts of Mr. Agerico P. Balles, MTCC-OCC, Tacloban City." Our Decision in this administrative matter partly reads: Hence, for the delay in the remittance of cash collections in violation of Supreme Court Circulars No. 5-93 and No. 13-92 and for his failure to keep proper records of all collections and remittances, Balles is found guilty of Gross Neglect of Duty punishable, even for the first offense,

by dismissal. **WHEREFORE**, Agerico P. Balles is hereby found GUILTY of gross neglect of duty and is ordered DISMISSED from the service. Except for leave credits already earned, his retirement benefits are FORFEITED, with prejudice to reemployment in any government agency, including government-owned and controlled corporations. The Civil Service Commission is ordered to cancel his civil service eligibility, if any, in accordance with Section 9, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

2. ID.; ID.; ID.; ID.; DISMISSAL FROM SERVICE RENDERS THE CASE MOOT AND ACADEMIC.— Atty. Balles' dismissal from the service has now been implemented, thus rendering the adjudication of the present administrative matter an exercise in futility; no administrative penalty can be imposed after his dismissal from the service, the forfeiture of all his employment benefits except for accrued leave credits, and his disqualification from future employment with any government agency. We thus have no option left but to dismiss the present administrative matter for being moot and academic.

APPEARANCES OF COUNSEL

Anita T. Baldesco-De Loyola for complainant.

R E S O L U T I O N

BRION, *J.*:

This administrative matter arose from a letter complaint[1] of Presentation V. Anota, dated June 23, 2004, addressed to Chief Justice Hilario G. Davide, Jr.

In her letter, Mrs. Anota stated that her husband, Felicisimo G. Anota, Municipal Trial Court in Cities (*MTCC*)-Branch I Clerk of Court, Tacloban City, died without enjoying his retirement benefits because Atty. Agerico P. Balles, Clerk of Court IV of the Tacloban City MTCC, unjustly refused to issue the clearance necessary for the release of her husband's retirement benefits. She alleged that her husband was forced to retire from the

[1] *Rollo*, Vol. I, pp. 4-5.

government at 63 years of age because of kidney problems traceable to diabetes; that he had to undergo amputation and had dialysis twice a week for 19 months, before he died on June 21, 2004; and that he filed all the necessary documents for his retirement, and the only missing document was the clearance from Atty. Balles. Atty. Balles refused to issue the clearance despite his knowledge that Mr. Anota had been cleared of money and property accountability and had no administrative case pending against him.

In his comment[2] to the 1st Endorsement of Mrs. Anota's complaint, Atty. Balles asserted that he could not issue the clearance because Presiding Judge Marino Buban believed that Mr. Anota still had to answer for some missing court records, among others.

We referred the matter to the Tacloban City Regional Trial Court executive judge for investigation, report and recommendation, upon the recommendation of the Office of the Court Administrator (OCA).[3] The investigating judge conducted several hearings, and based on his conclusion, the OCA, in its Memorandum,[4] ruled that Atty. Balles' acts amounted to oppression. There was no missing court record in Tacloban City MTCC-Branch 1 according to the Court Management Office-OCA's judicial audits in June 2000 and August 2003, and the incumbent MTCC Clerk of Court testified that Mr. Anota had fully accounted for all the money and property under his custody. Thus, the OCA found Atty. Balles' refusal to issue the clearance grossly unjust because Mr. Anota could have used his retirement benefits for his medicine and hospital expenses during his confinement.

We concur with the OCA's findings, and would have fully concurred with its recommended sanctions against Atty. Balles, except that:

First, on March 28, 2006, Atty. Balles submitted to us a certification that Felicisimo Anota had been cleared of money

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[2] *Id.* at 69-71.

[3] January 12, 2005 Report to this Court; *id.* at 102-104.

[4] Dated December 12, 2005; *id.* at 309-312.

and property accountabilities;[5] and

Second, in 2009, we dismissed Atty. Balles from the service in A.M. No. P-05-2065, entitled "Report on the Financial Audit Conducted on the Books of Accounts of Mr. Agerico P. Balles, MTCC-OCC, Tacloban City."[6] Our Decision in this administrative matter partly reads:

> Hence, for the delay in the remittance of cash collections in violation of Supreme Court Circulars No. 5-93 and No. 13-92 and for his failure to keep proper records of all collections and remittances, Balles is found guilty of Gross Neglect of Duty punishable, even for the first offense, by dismissal.
>
> WHEREFORE, Agerico P. Balles is hereby found GUILTY of gross neglect of duty and is ordered DISMISSED from the service. Except for leave credits already earned, his retirement benefits are FORFEITED, with prejudice to reemployment in any government agency, including government-owned and controlled corporations. The Civil Service Commission is ordered to cancel his civil service eligibility, if any, in accordance with Section 9, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.[7]

Atty. Balles' dismissal from the service has now been implemented, thus rendering the adjudication of the present administrative matter an exercise in futility; no administrative penalty can be imposed after his dismissal from the service, the forfeiture of all his employment benefits except for accrued leave credits, and his disqualification from future employment with any government agency. We thus have no option left but to dismiss the present administrative matter for being moot and academic.

WHEREFORE, we hereby *ORDER* the dismissal of the present administrative matter for being moot and academic.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

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[5] *Id.* at 330.

[6] April 2, 2009, 583 SCRA 50.

[7] *Id.* at 62.

THIRD DIVISION

[A.M. No. P-10-2837. August 25, 2010]
(Formerly OCA I.P.I. No. 07-2613-P)

PO2 PATRICK MEJIA GABRIEL, *complainant, vs.* **WILLIAM JOSE R. RAMOS, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 166, PASIG CITY,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; FAILURE OF COMPLAINANT TO ADDUCE EVIDENCE TO ESTABLISH ALLEGATION OF GRAVE MISCONDUCT; DISMISSAL OF COMPLAINT, PROPER.— From the evidence adduced, complainant failed to establish the allegations of grave misconduct against herein respondent. "In administrative proceedings, the burden of proof that respondent committed the act complained of rests on the complainant." With no hard evidence except unconfirmed self serving assertions to back up the complaint, this Office has no choice but to recommend dismissal of the present complaint. We find Judge Manalastas' recommendation to be in order. Indeed, PO2 Gabriel failed to prove his complaint against Sheriff Ramos. **Wherefore**, premises considered, the Complaint for Grave Misconduct filed by PO2 Patrick Mejia Gabriel against Sheriff IV William Jose R. Ramos, RTC, Branch 166, Pasig City, is hereby **dismissed** for lack of evidence.

D E C I S I O N

BRION, *J.*:

Before the Court is the present administrative complaint for grave misconduct filed, on July 13, 2007,[1] by PO2 Patrick Mejia Gabriel, (Gabriel) with the Office of the Court Administrator

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

(*OCA*), against William Jose R. Ramos, (Ramos), Sheriff IV, Regional Trial Court (RTC), Branch 166, Pasig City.

Acting on the complaint, the OCA required Ramos to comment.[2] Ramos complied and filed his comment on September 6, 2007. Thereafter, the OCA submitted a Report (dated August 28, 2008)[3] to the Court, whose relevant portions provide:

> Complainant states that he is presently a member of the Philippine National Police and designated as Chief Investigator assigned at San Teodoro, Oriental Mindoro.
>
> According to the complainant on 10 May 2007 at around 4:00 o'clock in the afternoon at Barangay Calsapa, Municipality of San Teodoro, Oriental Mindoro said respondent together with several persons, in conspiracy and on agreement with former Municipal Mayor Manuel Roxas Bae, entered the house of Ms. Adelaida Caeg Hael. Soon thereafter, two (2) pieces of Five Hundred (₱500.00) bills were handed to Adelaida and Ariel Hael to vote for Mayoralty Candidate Homer Roxas Alumisin and other candidates listed in the yellow pages. The said vote buying incident was reported by Adelaida and Ariel Hael to San Teodoro Municipal Police Station, who both executed their respective Sworn Statements enclosed as Annexes "A" and "B" hereof. A case for Violation of Article 22, Section 261 (a) of the Omnibus Election Code of the Philippines was also filed against respondent together with his co-conspirators docketed as I.S. No. 07-12386 before the Prosecutor's Office of Oriental Mindoro attached as Annex "C".
>
> In a COMMENT dated 9 August 2007, respondent alleges that the charges in the complaint are utterly false, malicious and intended to intimidate him from prosecuting cases of robbery as well as administrative charges against several policemen, including herein complainant for openly campaigning for a certain candidate during the election period.
>
> Respondent admits that on the date stated in the complaint he was indeed at Barangay Calsapa, San Teodoro, Oriental Mindoro to buy charcoal which he sells for a profit to augment his income. Respondent adds that he was with Manuel Roxas Bae and that he was

[2] *Id.* at 8.

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

able to talk with Ariel [Caeg] Hael but their discussion has nothing to do with politics. He insists that he was not financially capable to buy two (2) votes at ₱500.00 each. He is aware that as a government employee he cannot campaign, much less take part in partisan politics. He points out that buying votes several days before election is incongruous because the voters could change their mind on election day.

EVALUATION: The issue for resolution is whether Mr. Ramos may be held liable for Grave Misconduct.

Respondent explained that he was indeed at Barangay Calsapa, San Teodoro, Oriental Mindoro on 10 May 2007 but only to buy charcoal. In the Affidavit dated May 10 and 11, 2007 of Ms. Adelaida and Ariel Hael, both categorically pointed to respondent and Manuel Bae as the persons who handed them a sample ballot and two (2) ₱500.00 bills and uttered "*ITO PO AY INYO BASTA ITO LAMANG ANG INYONG IBOBOTO, AT ITONG SI HOMER ALUMISIN NA ANG IBOTO NYO MAYOR*." Both claimed that respondent and Mr. Bae were leaders for the party of mayoralty candidate Homer Alumisin.

The conflicting versions of both parties present a factual issue which could not be resolved based only on the pleadings submitted before us. A formal investigation is necessary to thresh out the truth and also to afford herein respondent the chance to face his accusers.

RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court recommending that the instant case be REFERRED to the Executive Judge of RTC, Pasig City, for investigation, report and recommendation within sixty (60) days from receipt of the records.

The Court took note of the OCA report and referred the case to the Executive Judge of the RTC, Pasig City, for investigation.[4] Accordingly, the OCA forwarded the case record to Executive Judge Amelia C. Manalastas, RTC, Pasig City.[5]

In a report submitted on January 26, 2009,[6] Judge Manalastas recommended the dismissal of the complaint for lack of evidence. The report states:

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[4] *Id.* at 17; Resolution dated October 15, 2008.

[5] *Id.* at 19; OCA letter dated November 14, 2008.

[6] *Id.* at 50-51; Compliance dated January 19, 2009.

1) On November 24, 2008, this Office notified all the parties for conference/hearing with directive to submit their respective sworn statements on December 8 and 15, 2008, both at 10:00 o'clock in the morning;

2) On both dates, only respondent and his counsel appeared while respondent who was notified via LBC failed to appear despite due notice;

3) In the conduct of the investigation, respondent vehemently denied all the charges against him. The evidence submitted to this Office reveals that the filing of the instant administrative case appears to be a mere leverage and stemmed from a case filed by herein respondent against the complainant for Robbery. (Formal Offer; Exhibits "A" and "B"; TSN dated December 15, 2008);

4) From the evidence adduced, complainant failed to establish the allegations of grave misconduct against herein respondent. "In administrative proceedings, the burden of proof that respondent committed the act complained of rests on the complainant" (*Gotgotao versus Millora*, 459 SCRA 340).

5) With no hard evidence except unconfirmed self serving assertions to back up the complaint, this Office has no choice but to recommend dismissal of the present complaint.

We find Judge Manalastas' recommendation to be in order. Indeed, PO2 Gabriel failed to prove his complaint against Sheriff Ramos.

WHEREFORE, premises considered, the Complaint for Grave Misconduct filed by PO2 Patrick Mejia Gabriel against Sheriff IV William Jose R. Ramos, RTC, Branch 166, Pasig City, is hereby *DISMISSED* for lack of evidence.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

THIRD DIVISION

[G.R. No. 151168. August 25, 2010]

CEBU AUTOMETIC MOTORS, INC. and TIRSO UYTENGSU III, *petitioners, vs.* **GENERAL MILLING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED AND PASSED UPON BY THE SUPREME COURT; EXCEPTION.— In petitions for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, only questions of law may be raised and passed upon by this Court. As in any general rule, however, certain exceptions may exist. In the present case, we are asked to either uphold GMC's unlawful detainer complaint or dismiss it outright under a situation where the findings of facts of the trial court and the appellate court conflict with each other, which is one of the recognized exceptions to the requirement that Rule 45 petitions deal only with questions of law. If necessary, therefore, we can examine the evidence on record in this case and determine the truth or falsity of the parties' submissions and allegations.

2. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; TWO DEMANDS THAT MAY BE MADE IN THE SAME DEMAND LETTER, CLARIFIED.— Section 2, Rule 70, on its face, involves two demands that may be made in the same demand letter, namely, (1) the demand for payment of the amounts due the lessor, ***or*** the compliance with the conditions of the lease, ***and*** (2) the demand to vacate the premises. These demands, of course, are not intended to be complied with at the same time; otherwise, the provision becomes contradictory as it is pointless to demand payment or compliance if the demand to vacate is already absolute and must be heeded at the same time as the demand to pay or to comply. *It is only after the demands for payment or compliance are made on the lessee and subsequently rejected or ignored that the basis for the unlawful detainer action arises.* The twin aspects of the demand

letter can best be understood when Section 2, Rule 70 is *read and understood* as the specific implementing procedural rule to carry out the results that Article 1673 mandates – the rescission of the contract of lease and the judicial ejectment of the lessee. The **judicial rescission** of a contract of lease is essentially governed by **Article 1659** of the Civil Code, grounded on the breach of the parties' statutory obligations: in the case of the lessee, for its failure to pay the rent or to use the property under lease for the purpose it was intended. **Article 1673, read with Section 2, Rule 70 of the Rules, does away with the need for an independent judicial action to rescind prior to ejectment by combining these remedies in an unlawful detainer action**. The law of contracts (essentially, Articles 1191 of the Civil Code for judicial rescission and Article 1659 for the judicial rescission of lease agreements) firmly establishes that the failure to pay or to comply with the contractual term does not, *by itself*, give rise to a cause of action for rescission; **the cause of action only accrues after the lessee has been in default for its failure to heed the demand to pay or to comply**. With the contract *judicially* rescinded, the demand to vacate finds full legal basis. Article 1673, implemented pursuant to Section 2, Rule 70, does away with a separate judicial action for rescission, and allows under a single complaint the judicial ejectment of the lessee after *extrajudicial* rescission has taken place. These combined remedies account for the separate aspects of the demand letter: the demand to pay rentals ***or*** to comply with the terms of the lease, ***and*** to vacate. The tenant's refusal to heed the demand to vacate, coming after the demand to pay or to comply similarly went unheeded, renders unlawful the continued possession of the leased premises; hence, the unlawful detainer action.

3. ID.; ID.; ID.; ID.; AN EXTRAJUDICIAL RESCISSION GIVES RISE TO THE DEMAND TO VACATE THAT, UPON BEING REFUSED, RENDERS THE POSSESSION ILLEGAL AND LAYS THE LESSEE OPEN TO EJECTMENT; ABSENCE THEREOF IN CASE AT BAR.— An extrajudicial rescission gave rise to the demand to vacate that, upon being refused, rendered the possession illegal and laid the lessee open to ejectment. The rescission, an extrajudicial one, was triggered by the lessee's refusal to pay the rent or to comply with the

terms of the lease. The Court put it in plainer terms in *Arquelada v. Philippine Veterans Bank:* where it said: As contemplated in Section 2, the demand required is the demand to pay or comply with the conditions of the lease and not merely a demand to vacate. Consequently, **both demands - either to pay rent or adhere to the terms of the lease and vacate are necessary to make the lessee a deforciant in order that an ejectment suit may be filed**. It is the lessor's demand for the lessee to vacate the premises and the tenant's refusal to do so which makes unlawful the withholding of the possession. Such refusal violates the lessor's right of possession giving rise to an action for unlawful detainer. However, **prior to the institution of such action, a demand from the lessor to pay or comply with the conditions of the lease and to vacate the premises is required under the aforequoted rule. Thus, mere failure to pay the rents due or violation of the terms of the lease does not automatically render a person's possession unlawful**. Furthermore, the giving of such demands must be alleged in the complaint, otherwise the MTC cannot acquire jurisdiction over the case. A close examination of GMC's letter to CAMI tells us that the letter merely informed recipient CAMI that GMC had terminated the lease based on the cited violations of the terms of the lease, and on the basis of this termination, required CAMI to vacate the premises by the end of the month. In other words, *the letter did not demand compliance with the terms of the lease; GMC was past this point as it had rescinded the contract of lease and was already demanding that the leased premises be vacated and the amounts owing be paid.* Thus, whether or not the amounts due were paid, the lease remained terminated because of the cited violations. From this perspective, GMC did not fully comply with *the requirements of Section 2, Rule 70.* Technically, **no extrajudicial rescission effectively took place** as a result of the cited violations until the demand to pay or comply was duly served and was rejected or disregarded by the lessee. This aspect of the demand letter – missing in the demand letter and whose rejection would have triggered the demand to vacate – gave GMC no effective cause of action to judicially demand the lessee's ejectment. All these, the appellate court unfortunately failed to appreciate.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioners.

D E C I S I O N

BRION, *J.*:

We resolve the petition filed by Cebu Autometic Motors, Inc. (*CAMI*) to assail the decision[1] of the Court of Appeals (*CA*) in CA-G.R. SP No. 64363. The CA decision:

a) reversed and set aside the decision of the Regional Trial Court of Cebu, Branch 16 (*RTC*) in Civil Case No. CEB-25804 dismissing respondent General Milling Corporation's (*GMC*) unlawful detainer complaint against CAMI;[2] and

b) reinstated the decision of the Municipal Trial Court in Cities (*MTCC*) in Civil Case no. R-41923[3] ordering: CAMI to vacate the subject property; and CAMI and Tirso Uytengsu III (*Uytengsu*) to pay GMC actual damages in the amount of ₱20,000.00 a month from the date of demand until property has been vacated, as well as ₱50,000.00 for attorney's fees.

FACTUAL ANTECEDENTS

GMC, a domestic corporation, is the registered owner of the GMC Plaza Complex, a commercial building on Legaspi Extension corner McArthur Boulevard, Cebu City. On February 2, 1998, GMC, represented by its General Manager, Luis Calalang Jr. (*Calalang*), entered into a contract with CAMI, a domestic corporation, for the lease of a 2,906 square meter commercial space within GMC's building (*leased premises*).

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[1] Dated September 28, 2001, penned by Associate Justice Rodrigo Cosico and concurred in by Associate Justices Ramon Barcelona and Bienvenido Reyes; *rollo*, pp. 39-47.

[2] Dated January 18, 2001; *id.* at 36-38.

[3] Dated July 5, 2000; *id.* at 28-35.

The lease contract was for a period of twenty (20) years, with the monthly rental fixed at ₱10,000.00. The contract further stipulated that the property shall be used exclusively by CAMI as a garage and repair shop for vehicles,[4] and imposed upon CAMI the following terms and conditions:

C. The LESSEE shall upon the signing of this contract immediately deposit with the LESSOR the following amounts:

a. The sum of PESOS: - TEN THOUSAND & 00/100 (₱10,000.00) inclusive of VAT Philippine currency, to be applied as rental for the last month;

b. The sum PESOS – TEN THOUSAND & 00/100 – (₱10,000.00) as guarantee deposit to defray the cost of the repairs necessary to keep the leased premises in a good state of repair and to pay the LESSEE'S unpaid bills from the various utility services in the leased premises; that this amount shall be refundable, if upon the termination of this contract, the leased premises are in good state of repair and the various utility bills have been paid.

xxx xxx xxx

H. The LESSEE shall not place or install any signboard, billboard, neon lights, or other form of advertising signs on the leased premises or on any part thereof, except upon the prior written consent of the LESSOR.

xxx xxx xxx

M. Finally, the failure on the part of the LESSOR to insist upon a strict performance of any of the terms, conditions and covenants hereof shall not be deemed a relinquishment or waiver of any right or remedy that said LESSOR may have, nor shall it be construed as a waiver of any subsequent breach or default of the terms, conditions and covenants herein contained, unless expressed in writing and signed by the LESSOR or its duly authorized representative.[5]

According to GMC, CAMI violated the provisions of the lease contract when: a) CAMI subleased a portion of the leased

[4] *Id.* at 60-63.

[5] *Id.* at 61-62.

premises without securing GMC's prior written consent; b) CAMI introduced improvements to the leased premises without securing GMC's consent; and c) CAMI did not deliver the required advance rental and deposit to GMC upon the execution of the lease contract.

On June 11, 1999, GMC sent CAMI a letter informing the latter that it was terminating the lease contract and demanding that CAMI vacate the premises and settle all its unpaid accounts before the end of that month.

On July 7, 1999, GMC filed a complaint for unlawful detainer with the MTCC against CAMI, asserting that it terminated the lease contract on June 11, 1999 because CAMI violated the terms of the contract and continued to do so despite GMC's repeated demands and reminders for compliance; and that CAMI refused to vacate the leased premises. GMC also impleaded Uytengsu, the General Manager of CAMI, in his official and personal capacities.

In response, CAMI denied that it had subleased any portion of the leased premises. On the improvements allegedly introduced without GMC's consent, CAMI explained that these were introduced prior to the execution of the present lease contract; in fact, these improvements were made with GMC's knowledge and were the reason why GMC decided to enter into the present lease contract with CAMI for 20 years at the low rental of only ₱10,000.00 a month. On its alleged failure to deliver the advance rental and deposit, CAMI pointed out that Calalang, GMC's representative, had verbally waived this requirement. Moreover, CAMI contended that a party is considered in default only if it fails to comply with the demand to observe the terms and conditions of the contract. Since CAMI immediately deposited the amount of ₱20,000.00 with the court as advance rental and deposit after it learned of the unlawful detainer complaint, it could not be considered in default. Consequently, CAMI posits that it did not violate any of the provisions of the lease contract, and GMC had no right to terminate the lease contract and to demand CAMI's ejectment from the leased premises.

On July 5, 2000, the MTCC rendered its decision in favor of GMC. The dispositive portion of its ruling reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff [GMC] and against the defendant [CAMI], to wit:
>
> 1. Ordering the defendants and all other person (sic) staying in the premises of the plaintiff to vacate the property and remove all their temporary structure therein;
>
> 2. Ordering the defendants to pay plaintiff compensatory damages in the amount of ₱20,000.00 a month from date (sic) demand until defendants vacate plaintiff property;
>
> 3. Ordering the defendants to pay plaintiff Attorney's Fees in the amount of ₱50,000.00;
>
> 4. Ordering the defendants to pay the costs.
>
> SO ORDERED.

The RTC reversed the MTCC decision and dismissed GMC's complaint after finding that CAMI had not violated the terms and conditions of the lease contract. The RTC learned that Calalang had waived payment of the advance rental and deposit, and had given his consent to the introduction of improvements, signboards and alterations on the leased premises. The RTC also held that CAMI did not sublease the premises.

GMC sought relief from the RTC decision through a petition for review with the CA. GMC claimed that Calalang's waiver of the advance rental and deposit was void since it was not in writing. In response, CAMI questioned whether GMC had complied with the requisites of Section 2, Rule 70 of the Rules of Court prior to the filing of the unlawful detainer complaint – *an issue that, according to GMC, was raised for the first time before the CA.*

In the assailed September 28, 2001 decision, the CA reversed the RTC decision and held that even though the advance rental and deposit payments could be waived under the contract, the waiver had to be in writing and signed by a duly authorized representative of GMC in order to be effective. Since Calalang's

waiver was not contained in a written document, it could not bind GMC.

As to the contention that GMC failed to comply with the jurisdictional requirement found in Section 2, Rule 70 of the Rules of Court, the CA held that such a belated claim could no longer be entertained at that late stage of the proceedings. Since CAMI freely litigated on the issues presented by GMC before the lower courts without raising this issue, it cannot now raise the issue on the basis of estoppel.

THE PETITION

CAMI now comes to this Court *via* a petition for review on *certiorari*,[6] claiming that the CA committed reversible error in its September 28, 2001 decision and November 22, 2001 resolution.

First, CAMI contends that the demand letter sent by GMC merely stated that it expected CAMI to vacate the premises and pay all its unsettled accounts by the end of June 1999; the letter did not demand compliance with the terms of the contract. Thus, CAMI could not be considered in default and GMC had no cause to terminate the lease contract. The defective demand letter also failed to comply with the demand required by Section 2, Rule 70 of the Rules of Court; pursuant to *Arquelada v. Philippine Veterans Bank*[7] – which held that the demand from the lessor to pay or to comply with the conditions of the lease and to vacate the premises must be alleged in the complaint for unlawful detainer for the MTCC to acquire jurisdiction over the case – the MTCC thus failed to acquire jurisdiction over GMC's complaint against it.

Next, CAMI assails the CA interpretation of paragraph M of the lease contract.[8] According to CAMI, paragraph M only applies when the waiver refers to the right of GMC to take action for

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[6] Under Rule 45 of the RULES OF COURT dated December 5, 2001; *id.* at 4-27.

[7] 385 Phil. 1200 (2000).

[8] Paragraph M states:

any violation of the terms and conditions of the contract. Where the waiver relates to the performance of the term or condition, such as waiver of the payment of advance rental and deposit, the waiver does not need to be in writing.

Last, CAMI questions the reinstatement of the MTCC decision, which ordered CAMI and Uytengsu to pay for actual damages to GMC in the amount of ₱20,000.00 per month from the time of demand until CAMI actually vacated the property, and attorney's fees in the amount of ₱50,000. CAMI assails the award of damages for having no legal or factual basis.

GMC, on the other hand, contends that CAMI never raised the issue of GMC's lack of demand before either the MTCC or the RTC as one of its defenses; instead, this issue, as well as the corresponding issue of the MTCC's lack of jurisdiction, was raised for the first time on appeal before the CA. GMC also reiterates the CA's ruling that any waiver of the lease contract's terms and conditions must be in writing in order to be effective. Finally, GMC dismisses CAMI's questions on the inclusion of Uytengsu, as well as the award of actual damages and attorney's fees, for not having been raised before the lower courts.

THE COURT'S RULING

We resolve to grant the petition.

Petition raises factual questions

In petitions for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, only questions of law may be raised and passed upon by this Court. As in any general rule, however, certain exceptions may exist.[9] In the present case, we are asked

M. Finally, the failure on the part of the LESSOR to insist upon a strict performance of any of the terms, conditions and covenants hereof shall not be deemed a relinquishment or waiver of any right or remedy that said LESSOR may have, nor shall it be construed as a waiver of any subsequent breach or default of the terms, conditions and covenants herein contained, unless expressed in writing and signed by the LESSOR or its duly authorized representative.

[9] These exceptions are: (1) When the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference made

to either uphold GMC's unlawful detainer complaint or dismiss it outright under a situation where the findings of facts of the trial court and the appellate court conflict with each other, which is one of the recognized exceptions to the requirement that Rule 45 petitions deal only with questions of law. If necessary, therefore, we can examine the evidence on record in this case and determine the truth or falsity of the parties' submissions and allegations.

On the issue of demand

GMC claims that CAMI belatedly raised the issue of lack of demand. On the other hand, CAMI contends in its *Motion to Admit Reply*[10] that it raised this defense as early as its *Answer* before the MTCC.

We agree with CAMI. The MTCC decision, which quoted CAMI's *Answer* extensively, clearly shows that *CAMI stated that it will be in default with respect to the advance rental and deposit only after GMC has made a demand for the payment.* CAMI also stated that it had already deposited the advance rental and deposit with the Clerk of Court of the MTCC. Lastly, *CAMI denied GMC's claim in its complaint that a demand had been made*.[11] These statements, taken together, clearly belie

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is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. *Commissioner of Internal Revenue v. Embroidery and Garments Industries [Phils.], Inc.*, 364 Phil. 541 (1999); *Ayala Corporation v. Ray Burton Development Corporation*, 355 Phil. 475 (1998); *Nokom v. NLRC*, 390 Phil. 1228 (2000).

[10] Dated April 15, 2002; *rollo*, pp. 86-93.

[11] *Id.* at 32.

GMC's claim that CAMI never raised the lack of demand as an issue before the lower court.

Another issue raised, relating to demand, is whether GMC sent CAMI the required demand letter. Invoking Article 1169 of the Civil Code,[12] CAMI principally contends that it could not be considered in default because GMC never sent a proper demand letter.

CAMI, in invoking Article 1169, apparently overlooked that what is involved is not a mere *mora* or delay in the performance of a generic obligation to give or to do that would eventually lead to the remedy of rescission or specific performance. What is involved in the case is a contract of lease and the twin remedies of rescission and judicial ejectment after either the failure to pay rent or to comply with the conditions of the lease. This situation calls for the application, not of Article 1169 of the Civil Code but, of Article 1673 in relation to Section 2, Rule 70 of the Rules of Court. Article 1673 states:

Article 1673. The lessor may **judicially eject** the lessee for any of the following causes:

xxx xxx xxx

[12] This provision states:

> Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.
>
> However, the demand by the creditor shall not be necessary in order that delay may exist:
>
> (1) When the obligation or the law expressly so declare; or
>
> (2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
>
> (3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.
>
> In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

(3) Violation of any of the conditions agreed upon in the contract; xxx

Based on this provision, a lessor may judicially eject (and thereby likewise rescind the contract of lease) the lessee if the latter violates any of the conditions agreed upon in the lease contract. Implemented in accordance with Section 2, Rule 70, *the lessor is not required to first bring an action for rescission, but may ask the court to do so and simultaneously seek the ejectment of the lessee in a single action for unlawful detainer.*[13] Section 2, Rule 70 of the Rules of Court provides:

Sec. 2. Lessor to proceed against lessee only after demand.

Unless otherwise stipulated, **such action by the lessor shall be commenced only <u>after</u> demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee**, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings. [Emphasis supplied.]

GMC insists that it complied with the required demand when it sent CAMI the following letter:

June 11, 1999

CEBU AUTOMETIC MOTORS, INC.
GMC Plaza Complex
Legaspi Extension cor.
MacArthur Boulevard
Cebu City

ATTENTION: MR. TIRSO UYTENGSU III

Gentlemen:

We are informing you of the termination of the Contract of Lease over our clients, General Milling Corporation premises at GMC Plaza Complex effective June 30, 1999.

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[13] *Abaya Investments Corporation v. Merit Philippines*, G.R. No. 176324, April 16, 2008, 551 SCRA 646.

Your repeated violations of the terms of the contract, failure to deposit the required amounts (equivalent to two to three months rent) the subleasing of a portion of the leased premises without the required prior written consent, the introduction of improvements and alterations and the installation of a signboard without the prior written consent, leave us no choice.

It should be mentioned that the latest Contract of Lease was questionably entered by you and Mr. Luis Calalang, Jr. hurriedly, knowing fully well that the same was completely one-sided in your favor and totally disadvantageous to GMC. It was as if there was a plot or scheme to take advantage of the situation at the time.

We expect you to vacate the premises, settle all your unpaid accounts on or before the end of June, 1999. [Emphasis supplied.]

With this demand letter as evidence, we hold it undisputed that GMC did serve a prior demand on CAMI. The question, however, is whether this is the demand that Section 2, Rule 70 of the Rules of Court contemplates as a jurisdictional requirement before a lessor can undertake a judicial ejectment pursuant to Article 1673 of the Civil Code.

Section 2, Rule 70, on its face, involves two demands that may be made in the same demand letter, namely, (1) the demand for payment of the amounts due the lessor, ***or*** the compliance with the conditions of the lease, ***and*** (2) the demand to vacate the premises. These demands, of course, are not intended to be complied with at the same time; otherwise, the provision becomes contradictory as it is pointless to demand payment or compliance if the demand to vacate is already absolute and must be heeded at the same time as the demand to pay or to comply. *It is only after the demands for payment or compliance are made on the lessee and subsequently rejected or ignored that the basis for the unlawful detainer action arises.*

The twin aspects of the demand letter can best be understood when Section 2, Rule 70 is *read and understood* as the specific implementing procedural rule to carry out the results that Article 1673 mandates – the rescission of the contract of lease and the judicial ejectment of the lessee. The **judicial rescission** of a contract of lease is essentially governed by **Article 1659** of the

Civil Code, grounded on the breach of the parties' statutory obligations: in the case of the lessee, for its failure to pay the rent or to use the property under lease for the purpose it was intended. **Article 1673, read with Section 2, Rule 70 of the Rules, does away with the need for an independent judicial action to rescind prior to ejectment by combining these remedies in an unlawful detainer action**.

The law of contracts (essentially, Articles 1191 of the Civil Code for judicial rescission and Article 1659 for the judicial rescission of lease agreements) firmly establishes that the failure to pay or to comply with the contractual term does not, *by itself*, give rise to a cause of action for rescission; **the cause of action only accrues after the lessee has been in default for its failure to heed the demand to pay or to comply**.[14] With the contract *judicially* rescinded, the demand to vacate finds full legal basis.

Article 1673, implemented pursuant to Section 2, Rule 70, does away with a separate judicial action for rescission, and allows under a single complaint the judicial ejectment of the lessee after *extrajudicial* rescission has taken place. These combined remedies account for the separate aspects of the demand letter: the demand to pay rentals ***or*** to comply with the terms of the lease, ***and*** to vacate. The tenant's refusal to heed the demand to vacate, coming after the demand to pay or to comply similarly went unheeded, renders unlawful the continued possession of the leased premises; hence, the unlawful detainer action.[15]

In *Dio v. Concepcion*, we ruled that:

> Under Article 1673 of the Civil Code, the lessor may judicially eject the lessee for, among other causes: (1) lack of payment of the price stipulated; or (2) violation of any of the conditions agreed upon in the contract. **Previous to the institution of such action,**

[14] If the demand to pay or to comply is heeded, then the matter is settled extrajudicially; the demand to vacate is not heeded and judicial action is rendered necessary.

[15] *Supra* note 13; see also Zobel v. Abreu, 52 O.G. 3592.

the lessor must make a demand upon the lessee to pay or comply with the conditions of the lease and to vacate the premises. It is the owner's demand for the tenant to vacate the premises and the tenant's refusal to do so which makes unlawful the withholding of possession.[16] Such refusal violates the owner's right of possession giving rise to an action for unlawful detainer. [Emphasis supplied.]

Mr. Justice Jose Vitug further explained the Court's action in this case in his ***Separate Opinion*** when he said:

I just would like to add, by way of clarification, that the principal remedies open to an obligee, upon the breach of an obligation, are generally judicial in nature and must be independently sought in litigation, *i.e.*, an action for performance (specific, substitute or equivalent) or rescission (resolution) of a reciprocal obligation. The right to rescind (resolve) is recognized in reciprocal obligations; it is implicit, however, in third paragraph of Article 1191 of the Civil Code that the rescission there contemplated can only be invoked judicially. Hence, the mere failure of a party to comply with what is incumbent upon him does not *ipso jure* produce the rescission (resolution) of the obligation.

Exceptionally, under the law and, to a limited degree, by agreement of the parties, extrajudicial remedies may become available such as, in the latter case, an option to rescind or terminate a contract upon the violation of a *resolutory facultative condition.* In the case of lease agreements, despite the absence of an explicit stipulation, that option has been reserved by law in favor of a lessee under Article 1673 of the Civil Code by providing that the lessor may judicially eject the lessee for, among other grounds, a violation of any of the conditions agreed upon in the contract. The provision, read in conjunction with Section 2, Rule 70, of the 1997 Rules of Civil Procedure, would, absent a contrary stipulation, merely require a written demand on the lessee to pay or to comply with the conditions of the lease and to vacate the premises prior to the institution of an action for ejectment. The above provisions, in effect, authorizes the lessor to terminate extrajudicially the lease (with the same effect as rescission) by simply serving due notice to the lessee.

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[16] *Casilan v. Tomassi,* 10 SCRA 261, 267 (1964).

In this particular instance, therefore, the only relevant court jurisdiction involved is that of the first level court in the action for ejectment, an independent judicial action for rescission being unnecessary.

Thus, as further clarified, an extrajudicial rescission gave rise to the demand to vacate that, upon being refused, rendered the possession illegal and laid the lessee open to ejectment. The rescission, an extrajudicial one, was triggered by the lessee's refusal to pay the rent or to comply with the terms of the lease. The Court put it in plainer terms in *Arquelada v. Philippine Veterans Bank:*[17] where it said:

> As contemplated in Section 2, the demand required is the demand to pay or comply with the conditions of the lease and not merely a demand to vacate. Consequently, **both demands — either to pay rent or adhere to the terms of the lease and vacate are necessary to make the lessee a deforciant in order that an ejectment suit may be filed**. It is the lessor's demand for the lessee to vacate the premises and the tenant's refusal to do so which makes unlawful the withholding of the possession. Such refusal violates the lessor's right of possession giving rise to an action for unlawful detainer. However, **prior to the institution of such action, a demand from the lessor to pay or comply with the conditions of the lease and to vacate the premises is required under the aforequoted rule. Thus, mere failure to pay the rents due or violation of the terms of the lease does not automatically render a person's possession unlawful**. Furthermore, the giving of such demands must be alleged in the complaint, otherwise the MTC cannot acquire jurisdiction over the case. [Emphasis supplied.]

A close examination of GMC's letter to CAMI tells us that the letter merely informed recipient CAMI that GMC had terminated the lease based on the cited violations of the terms of the lease, and on the basis of this termination, required CAMI to vacate the premises by the end of the month. In other words, *the letter did not demand compliance with the terms of the lease; GMC was past this point as it had rescinded the contract of lease and was already demanding that the leased premises*

[17] G.R. No. 139137, March 31, 2000.

be vacated and the amounts owing be paid. Thus, whether or not the amounts due were paid, the lease remained terminated because of the cited violations.

From this perspective, GMC did not fully comply with *the requirements of Section 2, Rule 70.* Technically, **no extrajudicial rescission effectively took place** as a result of the cited violations until the demand to pay or comply was duly served and was rejected or disregarded by the lessee. This aspect of the demand letter – missing in the demand letter and whose rejection would have triggered the demand to vacate – gave GMC no effective cause of action to judicially demand the lessee's ejectment. All these, the appellate court unfortunately failed to appreciate.

Our above conclusion renders unnecessary any further ruling on the merits of the parties' positions on the existence of the substantive grounds for rescission and ejectment.

WHEREFORE, premises considered, we *GRANT* the petition and *REVERSE* and *SET ASIDE* the decision of the Court of Appeals dated September 28, 2001 in CA-G.R. SP. No. 64363. We accordingly *DECLARE* General Milling Corporation's complaint for unlawful detainer, Civil Case No. R-41923 before the Municipal Trial Court in Cities of Cebu City, *DISMISSED* for lack of cause of action. Costs against the respondent General Milling Corporation.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 154152. August 25, 2010]

LA CAMPANA DEVELOPMENT CORPORATION, *petitioner, vs.* **ARTURO LEDESMA, HON. JUDGE ESTRELLA T. ESTRADA, in her capacity as PRESIDING JUDGE, Regional Trial Court, Branch 83, Quezon City, and the HON. COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED.— For the Court to issue a writ of *certiorari* against the CA, it is incumbent upon petitioner to show that said lower court committed grave abuse of discretion. In *Quasha Ancheta Peña & Nolasco Law Office v. Special Sixth Division, Court of Appeals*, the Court stated that: Grave abuse of discretion means a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. **Mere abuse of discretion is not enough**; it must be so grave as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation or law.

2. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ON APPEAL, THE APPELLATE COURT MAY STAY THE EXECUTION OF JUDGMENT SHOULD CIRCUMSTANCES SO REQUIRE; SUSTAINED.— It is true that Section 21, Rule 70 of the Rules of Court provides that "[t]he judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom." However, the Court ruled in *Benedicto v. Court of Appeals* that "on appeal the appellate court may stay the said writ should circumstances so require. x x x even if RTC judgments in unlawful detainer cases are immediately executory, preliminary injunction may still be granted." Citing *Amagan v. Marayag* and *Vda. de Legaspi v.*

Avendaño, the Court explained in *Benedicto* that: Where the action, therefore, is one of illegal detainer, as distinguished from one of forcible entry, and the right of the plaintiff to recover the premises is seriously placed in issue in a proper judicial proceeding, it is more equitable and just and less productive of confusion and disturbance of physical possession, with all its concomitant inconvenience and expenses. For the Court in which the issue of legal possession, whether involving ownership or not, is brought to restrain, should a petition for preliminary injunction be filed with it, the effects of any order or decision in the unlawful detainer case in order to await the final judgment in the more substantive case involving legal possession or ownership. x x x Moreover, the Court also stressed in *City of Naga v. Asuncion* that: As a rule, the issuance of a preliminary injunction rests entirely within the discretion of the court taking cognizance of the case and will not be interfered with, except in cases of manifest abuse. x x x Be it noted that for a writ of preliminary injunction to be issued, the Rules of Court do not require that the act complained of be in clear violation of the rights of the applicant. Indeed, what the Rules require is that the act complained of be *probably* in violation of the rights of the applicant. Under the Rules, probability is enough basis for injunction to issue as a provisional remedy. x x x In the afore-quoted case, the Court reiterated that when exigencies in the case warrant it, the appellate court may stay the writ of execution issued by the RTC in an action for ejectment if there are circumstances necessitating such action. An example of such exceptional circumstance can be seen in *Laurel v. Abalos*. Therein, a defendant was ordered by the trial court to vacate the premises of the disputed property and return possession thereof to the plaintiffs, but while the ejectment case was on appeal, a judgment was promulgated in a separate case where the sale of the property to said plaintiffs was declared null and void, making the plaintiffs' right to possess the disputed property inconclusive. The Court ruled in said case that: Where supervening events (occurring subsequent to the judgment) bring about a material change in the situation of the parties which makes the execution inequitable, or **where there is no compelling urgency for the execution because it is not justified by the prevailing circumstances, the court may stay immediate execution of the judgment**. Based on the foregoing earlier ruling in *Laurel*,

the Court also considered it just and equitable to stay the execution of the RTC judgment in an ejectment case against the City of Naga, stating that: Needless to reiterate, grave and irreparable injury will be inflicted on the City of Naga by the immediate execution of the June 20, 2005 RTC Decision. x x x the people of Naga would be deprived of access to basic social services. It should not be forgotten that the land subject of the ejectment case houses government offices which perform important functions vital to the orderly operation of the local government. x x x

3. ID.; ID.; ID.; SUPERSEDEAS BOND FILED WITH THE MTC; SUFFICIENCY THEREOF; DISCUSSED.— Note that Section 4(b), Rule 58 of the Rules of Court provides that:

(b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued; However, in *Hualam Construction and Dev't. Corp. v. Court of Appeals*, the Court expounded on what damages may be recovered in actions for forcible entry or unlawful detainer, to wit: As to damages, We have on several occasions ruled that since the only issue raised in forcible entry or unlawful detainer cases is that of rightful physical possession, the "damages" recoverable in these cases are those which the plaintiff could have sustained as a mere possessor, *i.e.*, those caused by the loss of the use and occupation of the property, and not the damages which he may have suffered but which have no direct relation to his loss of material possession. x x x Simply put, "damages" in the context of Section 8 of Rule 70 [now Section 19, Rule 70 of the Rules of Court] is limited to "rent" or "fair rental value" for the use and occupation of the property. Since the only damages that petitioner may be entitled to in an action for unlawful detainer are those arising from its loss of the use or occupation of subject premises, the only damages petitioner can claim by reason of the stay of execution of the RTC judgment is also only for the "rent" or "fair rental value" for the property in question. Therefore, the

CA did not err in considering the *supersedeas* bond filed with the MTC, which answers for unpaid rentals, as sufficient bond for the issuance of a writ of preliminary injunction.

APPEARANCES OF COUNSEL

Augustus Caesar C. Aspiras for petitioner.
Lapulapu C. Osoteo for private respondent.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for *Certiorari* under Rule 65 of the Rules of Court, praying that the Resolution[1] of the Court of Appeals (CA), dated February 13, 2002, ordering the issuance of a writ of preliminary injunction, and its Resolution[2] dated June 28, 2002 denying petitioner's motion for reconsideration, be declared null and void *ab initio*.

The antecedent facts are as follows.

Petitioner filed an ejectment case with the Metropolitan Trial Court (MeTC) against private respondent Ledesma, alleging that despite expiration of the contract of lease executed between them and demands to vacate subject premises and pay rentals therefor, the latter failed to comply with such demands. Private respondent countered in his Answer that he had paid the rentals over subject premises and petitioner no longer had the right to possess the property as it had been foreclosed by the Development Bank of the Philippines (DBP). Private respondent further pointed out that subject premises had in fact been in the possession of the DBP since March or April of 1997, so since that time, it was with the DBP that he made arrangements for his continued occupation of the subject premises.

[1] Penned by Associate Justice Cancio C. Garcia, with Associate Justices Marina L. Buzon and Alicia L. Santos, concurring; *rollo,* pp. 104-113.

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

The MeTC then rendered judgment in favor of petitioner, ordering private respondent to surrender possession of subject premises to petitioner. Private respondent appealed to the Regional Trial Court (RTC), and to stay execution of said judgment, private respondent filed a *supersedeas* bond with the MeTC.

The RTC affirmed the MeTC judgment. Petitioner then moved for the immediate execution of the RTC Decision, which motion was granted by the RTC. Meanwhile, private respondent elevated the case to the CA *via* a petition for review on *certiorari* with prayer for the issuance of a temporary restraining order or writ of preliminary injunction. A temporary restraining order was issued by the CA, effectively staying implementation of the writ of execution issued by the RTC. Eventually, the CA also issued a writ of preliminary injunction per Resolution dated February 13, 2002. In justification of the issuance of said writ, the CA stated in said Resolution that:

> Based on the evidence before Us, We are convinced that the execution of the assailed decision of the RTC at this stage will probably cause injustice to the petitioner [herein private respondent]. We cannot ignore Our ruling in CA-GR CV No. 34856 which had already attained finality. The facts on hand show that the DBP is the present owner of the leased premises. The only person who can lawfully eject an unwelcome tenant from the leased premises is the owner thereof or persons deriving rights from said owner, of which private respondent [herein petitioner], in its Opposition to the present motion, does not pretend to be. Contrary to the stand of the respondent, the petitioner is not estopped from questioning the title of respondent over the leased premises as the rule on estoppel against tenants is subject to a qualification. It does not apply if the landlord's title has expired, or has been conveyed to another, or has been defeated by a title paramount, subsequent to the commencement of lessor-lessee relationship. In other words, if there was a change in the nature of the title of the landlord during the subsistence of the lease, then the presumption does not apply.

Petitioner's motion for reconsideration of said Resolution was denied on June 28, 2002.

Thus, petitioner filed the present petition for *certiorari* seeking the annulment of the aforementioned CA Resolutions.

The issues boil down to whether the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ordered the issuance of a writ of preliminary injunction to stay the immediate execution of the RTC judgment and whether *mandamus* lies to compel respondent RTC Judge to issue a writ of execution.

The Court finds the petition unmeritorious.

For the Court to issue a writ of *certiorari* against the CA, it is incumbent upon petitioner to show that said lower court committed grave abuse of discretion. In *Quasha Ancheta Peña & Nolasco Law Office v. Special Sixth Division, Court of Appeals*,[3] the Court stated that:

> Grave abuse of discretion means a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. **Mere abuse of discretion is not enough**; it must be so grave as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation or law.[4]

A showing of such grave abuse of discretion is sorely wanting in this case.

It is true that Section 21, Rule 70 of the Rules of Court provides that "[t]he judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom." However, the Court ruled in *Benedicto v. Court of Appeals*[5] that "on appeal the appellate court may stay the said writ should circumstances so require. x x x even if RTC judgments in unlawful detainer cases are immediately executory, preliminary injunction may still be granted." Citing *Amagan v. Marayag*[6]

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[3] G.R. No. 182013, December 4, 2009, 607 SCRA 712.

[4] *Id*. at 721-722. (Emphasis supplied.)

[5] G.R. No. 157604, October 19, 2005, 473 SCRA 363.

[6] 383 Phil. 486 (2000).

and *Vda. de Legaspi v. Avendaño*,[7] the Court explained in *Benedicto* that:

> Where the action, therefore, is one of illegal detainer, as distinguished from one of forcible entry, and the right of the plaintiff to recover the premises is seriously placed in issue in a proper judicial proceeding, it is more equitable and just and less productive of confusion and disturbance of physical possession, with all its concomitant inconvenience and expenses. For the Court in which the issue of legal possession, whether involving ownership or not, is brought to restrain, should a petition for preliminary injunction be filed with it, the effects of any order or decision in the unlawful detainer case in order to await the final judgment in the more substantive case involving legal possession or ownership. x x x[8]

Moreover, the Court also stressed in *City of Naga v. Asuncion*[9] that:

> As a rule, the issuance of a preliminary injunction rests entirely within the discretion of the court taking cognizance of the case and will not be interfered with, except in cases of manifest abuse. xxx
>
> xxx xxx xxx
>
> x x x Be it noted that for a writ of preliminary injunction to be issued, the Rules of Court do not require that the act complained of be in clear violation of the rights of the applicant. Indeed, what the Rules require is that the act complained of be *probably* in violation of the rights of the applicant. Under the Rules, probability is enough basis for injunction to issue as a provisional remedy. x x x[10]

In the afore-quoted case, the Court reiterated that when exigencies in the case warrant it, the appellate court may stay the writ of execution issued by the RTC in an action for ejectment if there are circumstances necessitating such action. An example of such exceptional circumstance can be seen in *Laurel v. Abalos*.[11]

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[7] 169 Phil. 138 (1977).

[8] *Benedicto v. Court of Appeals, supra* note 5, at 370-371.

[9] G.R. No. 174042, July 9, 2008, 557 SCRA 528.

[10] *Id.* at 545.

[11] 140 Phil. 532 (1969).

Therein, a defendant was ordered by the trial court to vacate the premises of the disputed property and return possession thereof to the plaintiffs, but while the ejectment case was on appeal, a judgment was promulgated in a separate case where the sale of the property to said plaintiffs was declared null and void, making the plaintiffs' right to possess the disputed property inconclusive. The Court ruled in said case that:

> Where supervening events (occurring subsequent to the judgment) bring about a material change in the situation of the parties which makes the execution inequitable, or **where there is no compelling urgency for the execution because it is not justified by the prevailing circumstances, the court may stay immediate execution of the judgment**.[12]

Based on the foregoing earlier ruling in *Laurel*,[13] the Court also considered it just and equitable to stay the execution of the RTC judgment in an ejectment case against the City of Naga, stating that:

> Needless to reiterate, grave and irreparable injury will be inflicted on the City of Naga by the immediate execution of the June 20, 2005 RTC Decision. x x x the people of Naga would be deprived of access to basic social services. It should not be forgotten that the land subject of the ejectment case houses government offices which perform important functions vital to the orderly operation of the local government. x x x[14]

In the present case, there also exists a material change in the situation of the parties. The CA properly took into serious consideration the fact that in its Decision in CA-G.R. CV No. 34856 entitled *La Campana Food Products, Inc. v. Development Bank of the Philippines*, which has become final and executory, **it ordered herein petitioner, formerly known as La Campana Food Products, Inc., to surrender possession of subject properties to the Development Bank of the**

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[12] *Id.* at 544. (Emphasis supplied.)

[13] *Id*.

[14] *City of Naga v. Asuncion, supra* note 9, at 546.

Philippines. Evidently, a serious cloud of doubt has been cast on petitioner's right of possession, making it questionable whether the RTC Decision, ordering private respondent to surrender possession of subject premises to petitioner, should be immediately implemented. Therefore, the CA did not gravely abuse its discretion in this case; rather, it acted prudently when it stayed execution of the RTC Decision until such time that a final resolution of the main case is reached.

Petitioner's contention, that it was improper for the CA to have granted private respondent's motion to consider the *supersedeas* bond it posted with the Metropolitan Trial Court as sufficient to cover the bond required for the issuance of the writ of preliminary injunction, is likewise incorrect. Petitioner argues that, "said supersedeas bond is posted solely and primarily to answer for a specific purpose which is for the payment of unpaid rentals accruing up to the final judgment. This cannot be held answerable for damages to petitioner should it later be found out that the private respondent is not entitled to the issuance [of a writ of preliminary injunction]."[15]

Note that Section 4(b), Rule 58 of the Rules of Court provides that:

> (b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued;

However, in *Hualam Construction and Dev't. Corp. v. Court of Appeals*,[16] the Court expounded on what damages may be recovered in actions for forcible entry or unlawful detainer, to wit:

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[15] Petitioner's Memorandum, *rollo*, p. 312.

[16] G.R. No. 85466, October 16, 1992, 214 SCRA 612.

> As to damages, We have on several occasions ruled that since the only issue raised in forcible entry or unlawful detainer cases is that of rightful physical possession, the "damages" recoverable in these cases are those which the plaintiff could have sustained as a mere possessor, *i.e.*, those caused by the loss of the use and occupation of the property, and not the damages which he may have suffered but which have no direct relation to his loss of material possession. x x x Simply put, "damages" in the context of Section 8 of Rule 70 [now Section 19, Rule 70 of the Rules of Court] is limited to "rent" or "fair rental value" for the use and occupation of the property.[17]

Since the only damages that petitioner may be entitled to in an action for unlawful detainer are those arising from its loss of the use or occupation of subject premises, the only damages petitioner can claim by reason of the stay of execution of the RTC judgment is also only for the "rent" or "fair rental value" for the property in question. Therefore, the CA did not err in considering the *supersedeas* bond filed with the MTC, which answers for unpaid rentals, as sufficient bond for the issuance of a writ of preliminary injunction.

In light of the foregoing, it is quite clear that there is no reason to compel the RTC to immediately implement the writ of execution in this case.

WHEREFORE, the petition is *DISMISSED* for lack of merit. The Resolutions of the Court of Appeals, dated February 13, 2002 and June 28, 2002, respectively, in CA-G.R. SP No. 66668, are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.*, concur.

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[17] *Id.* at 624-625.

THIRD DIVISION

[G.R. No. 156125. August 25, 2010]

FRANCISCO MUÑOZ, JR., *petitioner, vs.* **ERLINDA RAMIREZ and ELISEO CARLOS,** *respondents.*

SYLLABUS

1. CIVIL LAW; MARRIAGE; PROPERTY RELATIONS; PRESUMED CONJUGAL UNLESS THE CONTRARY IS PROVED.— As a general rule, all property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved. In the present case, clear evidence that Erlinda inherited the residential lot from her father has sufficiently rebutted this presumption of conjugal ownership. Pursuant to Articles 92 and 109 of the Family Code, properties acquired by gratuitous title by either spouse, during the marriage, shall be excluded from the community property and be the exclusive property of each spouse. The residential lot, therefore, is Erlinda's exclusive paraphernal property. x x x Under the second paragraph of Article 158 of the Civil Code, a land that originally belonged to one spouse becomes conjugal upon the construction of improvements thereon at the expense of the partnership. We applied this provision in *Calimlim-Canullas,* where we held that when the conjugal house is constructed on land belonging exclusively to the husband, the land *ipso facto* becomes conjugal, but the husband is entitled to reimbursement of the value of the land at the liquidation of the conjugal partnership.

2. ID.; FAMILY CODE; MARRIAGE; PROPERTY RELATIONS; CONJUGAL PARTNERSHIP OF GAINS GOVERNS.— As the respondents were married during the effectivity of the Civil Code, its provisions on conjugal partnership of gains (Articles 142 to 189) should have governed their property relations. However, with the enactment of the Family Code on August 3, 1989, the Civil Code provisions on conjugal partnership of gains, including Article 158, have been superseded by those found in the Family Code (Articles 105 to 133). Article 105

of the Family Code states: x x x **The provisions of this Chapter [on the Conjugal Partnership of Gains] shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code,** without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256. Thus, in determining the nature of the subject property, we refer to the provisions of the Family Code, and not the Civil Code, except with respect to rights then already vested.

3. ID.; ID.; ID.; ID.; OWNERSHIP OVER IMPROVEMENTS MADE ON SEPARATE PROPERTY OF THE SPOUSES; DETERMINED.— Article 120 of the Family Code, which supersedes Article 158 of the Civil Code, provides the solution in determining the ownership of the improvements that are made on the separate property of the spouses, at the expense of the partnership or through the acts or efforts of either or both spouses. Under this provision, when the cost of the improvement and any resulting increase in value are more than the value of the property at the time of the improvement, the entire property of one of the spouses shall belong to the conjugal partnership, subject to reimbursement of the value of the property of the owner-spouse at the time of the improvement; otherwise, said property shall be retained in ownership by the owner-spouse, likewise subject to reimbursement of the cost of the improvement. In the present case, we find that Eliseo paid a portion only of the GSIS loan through monthly salary deductions. From April 6, 1989 to April 30, 1992, Eliseo paid about ₱60,755.76, not the entire amount of the GSIS housing loan plus interest, since the petitioner advanced the ₱176,445.27 paid by Erlinda to cancel the mortgage in 1992. Considering the ₱136,500.00 amount of the GSIS housing loan, it is fairly reasonable to assume that the value of the residential lot is considerably more than the ₱60,755.76 amount paid by Eliseo through monthly salary deductions. Thus, the subject property remained the exclusive paraphernal property of Erlinda at the time she contracted with the petitioner; the written consent of Eliseo to the transaction was not necessary. The NBI finding that Eliseo's signatures in the special power of attorney and affidavit were forgeries was immaterial.

4. ID.; CONTRACTS; EQUITABLE MORTGAGE; DEFINED. — Jurisprudence has defined an equitable mortgage "as one

which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, there being no impossibility nor anything contrary to law in this intent."

5. **ID.; ID.; ID.; INSTANCES WHEN A CONTRACT IS PRESUMED AN EQUITABLE MORTGAGE.—** Article 1602 of the Civil Code enumerates the instances when a contract, regardless of its nomenclature, may be presumed to be an equitable mortgage: (a) when the price of a sale with right to repurchase is unusually inadequate; (b) **when the vendor remains in possession as lessee or otherwise;** (c) when upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed; (d) **when the purchaser retains for himself a part of the purchase price;** (e) **when the vendor binds himself to pay the taxes on the thing sold;** and, (f) **in any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation**. These instances apply to a contract purporting to be an absolute sale.

6. **ID.; ID.; ID.; ID.; REQUISITES.—** For the presumption of an equitable mortgage to arise under Article 1602 of the Civil Code, two (2) requisites must concur: (a) that the parties entered into a contract denominated as a contract of sale; and, (b) that their intention was to secure an existing debt by way of a mortgage. Any of the circumstances laid out in Article 1602 of the Civil Code, not the concurrence nor an overwhelming number of the enumerated circumstances, is sufficient to support the conclusion that a contract of sale is in fact an equitable mortgage.

7. **ID.; ID.; ID.; EXEMPLIFIED.—** The records show that the petitioner, in fact, sent Erlinda a Statement of Account showing that as of February 20, 1993, she owed ₱384,660.00, and the daily interest, starting February 21, 1993, was ₱641.10. Thus, the parties clearly intended an equitable mortgage and not a contract of sale. That the petitioner advanced the sum of ₱200,000.00 to Erlinda is undisputed. This advance, in fact, prompted the latter to transfer the subject property to the

petitioner. Thus, before the respondents can recover the subject property, they must first return the amount of ₱200,000.00 to the petitioner, plus legal interest of 12% per annum, computed from April 30, 1992. We cannot sustain the ballooned obligation of ₱384,660.00, claimed in the Statement of Account sent by the petitioner, *sans* any evidence of how this amount was arrived at. Additionally, a daily interest of ₱641.10 or ₱19,233.00 per month for a ₱200,000.00 loan is patently unconscionable. While parties are free to stipulate on the interest to be imposed on monetary obligations, we can step in to temper the interest rates if they are unconscionable. In *Lustan v. CA*, where we established the reciprocal obligations of the parties under an equitable mortgage, we ordered the reconveyance of the property to the rightful owner therein upon the payment of the loan within ninety (90) days from the finality of the decision.

APPEARANCES OF COUNSEL

Roberto C. Bermejo for petitioner.
Diego Untalan for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the present petition for review on *certiorari*[1] filed by petitioner Francisco Muñoz, Jr. (*petitioner*) to challenge the decision[2] and the resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 57126.[4] The CA decision set aside the decision[5] of the Regional Trial Court (*RTC*), Branch 166, Pasig City, in Civil Case No. 63665. The CA resolution denied the petitioner's subsequent motion for reconsideration.

[1] Filed under Rule 45 of the Revised Rules of Court; *rollo*, pp. 11-16.

[2] Dated June 25, 2002, penned by Associate Justice Juan Q. Enriquez, Jr., with the concurrence of Associate Justices Eugenio S. Labitoria and Mariano C. del Castillo (now a member of this Court); *id.* at 21-28.

[3] Dated November 13, 2002; *id.* at 31.

[4] Entitled "*Erlinda Ramirez and Eliseo Carlos v. Francisco E. Muñoz, Jr.*"

[5] Dated January 23, 1997; Original Records, pp. 296-299.

FACTUAL BACKGROUND

The facts of the case, gathered from the records, are briefly summarized below.

Subject of the present case is a seventy-seven (77)-square meter residential house and lot located at 170 A. Bonifacio Street, Mandaluyong City (*subject property*), covered by Transfer Certificate of Title (*TCT*) No. 7650 of the Registry of Deeds of Mandaluyong City in the name of the petitioner.[6]

The residential lot in the subject property was previously covered by TCT No. 1427, in the name of Erlinda Ramirez, married to Eliseo Carlos (*respondents*).[7]

On April 6, 1989, Eliseo, a Bureau of Internal Revenue employee, mortgaged TCT No. 1427, with Erlinda's consent, to the Government Service Insurance System (*GSIS*) to secure a ₱136,500.00 housing loan, payable within twenty (20) years, through monthly salary deductions of ₱1,687.66.[8] The respondents then constructed a thirty-six (36)-square meter, two-story residential house on the lot.

On July 14, 1993, the title to the subject property was transferred to the petitioner by virtue of a Deed of Absolute Sale, dated April 30, 1992, executed by Erlinda, for herself and as attorney-in-fact of Eliseo, for a stated consideration of ₱602,000.00.[9]

On September 24, 1993, the respondents filed a complaint with the RTC for the nullification of the deed of absolute sale, claiming that there was no sale but only a mortgage transaction, and the documents transferring the title to the petitioner's name were falsified.

The respondents alleged that in April 1992, the petitioner granted them a ₱600,000.00 loan, to be secured by a first mortgage

[6] *Id.* at 71-72.

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

[8] Folder of Plaintiffs' Formal Offer of Additional Evidence, pp. 6-8.

[9] Original Records, pp. 76-77.

on TCT No. 1427; the petitioner gave Erlinda a ₱200,000.00[10] advance to cancel the GSIS mortgage, and made her sign a document purporting to be the mortgage contract; the petitioner promised to give the ₱402,000.00 balance when Erlinda surrenders TCT No. 1427 with the GSIS mortgage cancelled, and submits an affidavit signed by Eliseo stating that he waives all his rights to the subject property; with the ₱200,000.00 advance, Erlinda paid GSIS ₱176,445.27[11] to cancel the GSIS mortgage on TCT No. 1427;[12] in May 1992, Erlinda surrendered to the petitioner the clean TCT No. 1427, but returned Eliseo's affidavit, unsigned; since Eliseo's affidavit was unsigned, the petitioner refused to give the ₱402,000.00 balance and to cancel the mortgage, and demanded that Erlinda return the ₱200,000.00 advance; since Erlinda could not return the ₱200,000.00 advance because it had been used to pay the GSIS loan, the petitioner kept the title; and in 1993, they discovered that TCT No. 7650 had been issued in the petitioner's name, cancelling TCT No.1427 in their name.

The petitioner countered that there was a valid contract of sale. He alleged that the respondents sold the subject property to him after he refused their offer to mortgage the subject property because they lacked paying capacity and were unwilling to pay the incidental charges; the sale was with the implied promise to repurchase within one year,[13] during which period (from May 1, 1992 to April 30, 1993), the respondents would lease the subject property for a monthly rental of ₱500.00;[14] when the respondents failed to repurchase the subject property within the one-year period despite notice, he caused the transfer of title in his name on July 14, 1993;[15] when the respondents failed to pay the monthly rentals despite demand, he filed an ejectment

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[10] TSN dated September 19, 1994, Testimony of Erlinda Ramirez, p. 4.

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

[12] Memorandum of Encumbrances of TCT No. 1427; *id.* at 69.

[13] TSN dated July 14, 1995, Testimony of Francisco Muñoz, Sr., pp. 7-8.

[14] Original Records, p. 152.

[15] *Id.* at 71-72.

case[16] against them with the Metropolitan Trial Court (*MeTC*), Branch 60, Mandaluyong City, on September 8, 1993, or sixteen days before the filing of the RTC case for annulment of the deed of absolute sale.

During the pendency of the RTC case, or on March 29, 1995, the MeTC decided the ejectment case. It ordered Erlinda and her family to vacate the subject property, to surrender its possession to the petitioner, and to pay the overdue rentals.[17]

In the RTC, the respondents presented the results of the scientific examination[18] conducted by the National Bureau of Investigation of Eliseo's purported signatures in the Special Power of Attorney[19] dated April 29, 1992 and the Affidavit of waiver of rights dated April 29, 1992,[20] showing that they were forgeries.

The petitioner, on the other hand, introduced evidence on the paraphernal nature of the subject property since it was registered in Erlinda's name; the residential lot was part of a large parcel of land owned by Pedro Ramirez and Fructuosa Urcla, Erlinda's parents; it was the subject of Civil Case No. 50141, a complaint for annulment of sale, before the RTC, Branch 158, Pasig City, filed by the surviving heirs of Pedro against another heir, Amado Ramirez, Erlinda's brother; and, as a result of a compromise agreement, Amado agreed to transfer to the other compulsory heirs of Pedro, including Erlinda, their rightful shares of the land.[21]

THE RTC RULING

In a Decision dated January 23, 1997, the RTC dismissed the complaint. It found that the subject property was Erlinda's

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[16] Civil Case No. 14271, entitled *Francisco Muñoz, Jr., rep. by his attorney-in-fact, Francisco Muñoz, v. Sps. Eliseo & Erlinda Ramirez*; *id.* at 153-155.

[17] *Id.* at 156-162.

[18] Folder of Plaintiffs' Formal Offer of Additional Evidence.

[19] Original Records, p. 70.

[20] *Id.* at 74.

[21] *Id.* at 163-169 and 170-172.

exclusive paraphernal property that was inherited from her father. It also upheld the sale to the petitioner, even without Eliseo's consent as the deed of absolute sale bore the genuine signatures of Erlinda and the petitioner as vendor and vendee, respectively. It concluded that the NBI finding that Eliseo's signatures in the special power of attorney and in the affidavit were forgeries was immaterial because Eliseo's consent to the sale was not necessary.[22]

The respondents elevated the case to the CA via an ordinary appeal under Rule 41 of the Revised Rules of Court.

THE CA RULING

The CA decided the appeal on June 25, 2002. Applying the second paragraph of Article 158[23] of the Civil Code and *Calimlim-Canullas v. Hon. Fortun*,[24] the CA held that the subject property, originally Erlinda's exclusive paraphernal property, became conjugal property when it was used as collateral for a housing loan that was paid through conjugal funds – Eliseo's monthly salary deductions; the subject property, therefore, cannot be validly sold or mortgaged without Eliseo's consent, pursuant to Article 124[25] of the Family Code. Thus, the CA declared void the deed of absolute sale, and set aside the RTC decision.

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[22] *Supra* note 5.

[23] Art. 158. x x x

Buildings constructed, at the expense of the partnership, during the marriage on land belonging to one of the spouses, also pertain to the partnership, but the value of the land shall be reimbursed to the spouse who owns the same**.**

[24] 214 Phil. 593 (1984).

[25] Art. 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. **These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the**

When the CA denied[26] the subsequent motion for reconsideration,[27] the petitioner filed the present petition for review on *certiorari* under Rule 45 of the Revised Rules of Court.

THE PETITION

The petitioner argues that the CA misapplied the second paragraph of Article 158 of the Civil Code and *Calimlim-Canullas*[28] because the respondents admitted in the complaint that it was the petitioner who gave the money used to cancel the GSIS mortgage on TCT No. 1427; Article 120[29] of the Family Code is the applicable rule, and since the value of the house is less than the value of the lot, then Erlinda retained ownership of the subject property. He also argues that the contract between the parties was a sale, not a mortgage, because (a) Erlinda did not deny her signature in the document;[30] (b) Erlinda agreed to

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disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

[26] Resolution of November 13, 2002; *supra* note 3.

[27] *Rollo*, pp. 131-136.

[28] *Supra* note 24.

[29] Art. 120. The ownership of improvements, whether for utility or adornment, made on the separate property of the spouses at the expense of the partnership or through the acts or efforts of either or both spouses shall pertain to the conjugal partnership, or to the original owner-spouse, subject to the following rules:

When the cost of the improvement made by the conjugal partnership and any resulting increase in value are more than the value of the property at the time of the improvement, the entire property of one of the spouses shall belong to the conjugal partnership, subject to reimbursement of the value of the property of the owner-spouse at the time of the improvement; otherwise, said property shall be retained in ownership by the owner-spouse, likewise subject to reimbursement of the cost of the improvement.

In either case, the ownership of the entire property shall be vested upon the reimbursement, which shall be made at the time of the liquidation of the conjugal partnership.

[30] TSN dated September 19, 1994, Testimony of Erlinda Ramirez, p. 14.

sign a contract of lease over the subject property;[31] and, (c) Erlinda executed a letter, dated April 30, 1992, confirming the conversion of the loan application to a deed of sale.[32]

THE CASE FOR THE RESPONDENTS

The respondents submit that it is unnecessary to compare the respective values of the house and of the lot to determine ownership of the subject property; it was acquired during their marriage and, therefore, considered conjugal property. They also submit that the transaction between the parties was not a sale, but an equitable mortgage because (a) they remained in possession of the subject property even after the execution of the deed of absolute sale, (b) they paid the 1993 real property taxes due on the subject property, and (c) they received ₱200,000.00 only of the total stated price of ₱602,000.00.

THE ISSUE

The issues in the present case boil down to (1) whether the subject property is paraphernal or conjugal; and, (2) whether the contract between the parties was a sale or an equitable mortgage.

OUR RULING

We deny the present Petition but for reasons other than those advanced by the CA.

This Court is not a trier of facts. However, if the inference, drawn by the CA, from the facts is manifestly mistaken, as in the present case, we can review the evidence to allow us to arrive at the correct factual conclusions based on the record.[33]

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[31] Original Records, p. 152.

[32] *Id.* at 151.

[33] *Hi-Cement Corporation v. Insular Bank of Asia and America,* G.R. Nos. 132403 & 132419, September 28, 2007, 534 SCRA 269; *Heirs of Flores Restar v. Heirs of Dolores R. Cichon,* G.R. No. 161720, November 22, 2005, 475 SCRA 731, 739; *Casol v. Purefoods Corporation,* G.R. No. 166550, September 22, 2005, 470 SCRA 585, 589.

First Issue:

Paraphernal or Conjugal?

As a general rule, all property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved.[34]

In the present case, clear evidence that Erlinda inherited the residential lot from her father has sufficiently rebutted this presumption of conjugal ownership.[35] Pursuant to Articles 92[36] and 109[37] of the Family Code, properties acquired by gratuitous title by either spouse, during the marriage, shall be excluded from the community property and be the exclusive property of each spouse.[38] The residential lot, therefore, is Erlinda's exclusive paraphernal property.

The CA, however, held that the residential lot became conjugal when the house was built thereon through conjugal funds, applying the second paragraph of Article 158 of the Civil Code and *Calimlim-Canullas*.[39] Under the second paragraph of Article 158 of the Civil Code, a land that originally belonged to one spouse becomes conjugal upon the construction of improvements thereon at the expense of the partnership. We applied this provision in *Calimlim-Canullas*,[40] where we held that when the conjugal house is constructed on land belonging exclusively to the husband, the land *ipso facto* becomes conjugal,

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[34] FAMILY CODE, Art. 116.

[35] *Supra* note 21.

[36] Art. 92. The following shall be excluded from the community property:

(1) Property acquired during the marriage by gratuitous title by either spouse[.]

[37] Art. 109. The following shall be the exclusive property of each spouse:

xxx xxx xxx

(2) That which each acquires during the marriage by gratuitous title[.]

[38] Previously Articles 148 and 201 of the Civil Code.

[39] *Supra* note 24.

[40] *Ibid.*

but the husband is entitled to reimbursement of the value of the land at the liquidation of the conjugal partnership.

The CA misapplied Article 158 of the Civil Code and Calimlim-Canullas

We cannot subscribe to the CA's misplaced reliance on Article 158 of the Civil Code and *Calimlim-Canullas*.

As the respondents were married during the effectivity of the Civil Code, its provisions on conjugal partnership of gains (Articles 142 to 189) should have governed their property relations. However, with the enactment of the Family Code on August 3, 1989, the Civil Code provisions on conjugal partnership of gains, including Article 158, have been superseded by those found in the Family Code (Articles 105 to 133). Article 105 of the Family Code states:

xxx xxx xxx

The provisions of this Chapter [on the Conjugal Partnership of Gains] shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256.

Thus, in determining the nature of the subject property, we refer to the provisions of the Family Code, and not the Civil Code, except with respect to rights then already vested.

Article 120 of the Family Code, which supersedes Article 158 of the Civil Code, provides the solution in determining the ownership of the improvements that are made on the separate property of the spouses, at the expense of the partnership or through the acts or efforts of either or both spouses. Under this provision, when the cost of the improvement and any resulting increase in value are more than the value of the property at the time of the improvement, the entire property of one of the spouses shall belong to the conjugal partnership, subject to reimbursement of the value of the property of the owner-spouse at the time of the improvement; otherwise, said property shall

be retained in ownership by the owner-spouse, likewise subject to reimbursement of the cost of the improvement.[41]

In the present case, we find that Eliseo paid a portion only of the GSIS loan through monthly salary deductions. From April 6, 1989[42] to April 30, 1992,[43] Eliseo paid about ₱60,755.76,[44] not the entire amount of the GSIS housing loan plus interest, since the petitioner advanced the ₱176,445.27[45] paid by Erlinda to cancel the mortgage in 1992. Considering the ₱136,500.00 amount of the GSIS housing loan, it is fairly reasonable to assume that the value of the residential lot is considerably more than the ₱60,755.76 amount paid by Eliseo through monthly salary deductions.

Thus, the subject property remained the exclusive paraphernal property of Erlinda at the time she contracted with the petitioner; the written consent of Eliseo to the transaction was not necessary. The NBI finding that Eliseo's signatures in the special power of attorney and affidavit were forgeries was immaterial.

Nonetheless, the RTC and the CA apparently failed to consider the real nature of the contract between the parties.

Second Issue:

Sale or Equitable Mortgage?

Jurisprudence has defined an equitable mortgage "as one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, there being no impossibility nor anything contrary to law in this intent."[46]

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[41] *Ferrer v. Ferrer*, G.R. No. 166496, November 29, 2006, 508 SCRA 570, 581.

[42] Date GSIS granted the loan; *supra* note 8.

[43] Date Erlinda settled the loan; *supra* note 11.

[44] ₱1,687.66 x 36 months' salary deductions (May 1989 to April 1992) = ₱60,755.76.

[45] *Supra* note 11.

[46] *Rockville Excel International Exim Corporation v. Culla*, G.R. No. 155716, October 2, 2009, 602 SCRA 128, 136.

Article 1602 of the Civil Code enumerates the instances when a contract, regardless of its nomenclature, may be presumed to be an equitable mortgage: (a) when the price of a sale with right to repurchase is unusually inadequate; (b) **when the vendor remains in possession as lessee or otherwise;** (c) when upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed; (d) **when the purchaser retains for himself a part of the purchase price;** (e) **when the vendor binds himself to pay the taxes on the thing sold;** and, (f) **in any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation**. These instances apply to a contract purporting to be an absolute sale.[47]

For the presumption of an equitable mortgage to arise under Article 1602 of the Civil Code, two (2) requisites must concur: (a) that the parties entered into a contract denominated as a contract of sale; and, (b) that their intention was to secure an existing debt by way of a mortgage. Any of the circumstances laid out in Article 1602 of the Civil Code, not the concurrence nor an overwhelming number of the enumerated circumstances, is sufficient to support the conclusion that a contract of sale is in fact an equitable mortgage.[48]

Contract is an equitable mortgage

In the present case, there are four (4) telling circumstances pointing to the existence of an equitable mortgage.

First, the respondents remained in possession as lessees of the subject property; the parties, in fact, executed a one-year contract of lease, effective May 1, 1992 to April 30, 1993.[49]

Second, the petitioner retained part of the "purchase price," the petitioner gave a ₱200,000.00 advance to settle the GSIS

[47] CIVIL CODE, Article 1604.

[48] *Bacungan v. Court of Appeals*, G.R. No. 170282, December 18, 2008, 574 SCRA 642, 648-649; *Sps. Salonga v. Sps. Concepcion*, 507 Phil. 287, 303 (2005); *Sps. Reyes v. Court of Appeals*, 393 Phil. 479, 490 (2000).

[49] *Supra* note 14.

housing loan, but refused to give the ₱402,000.00 balance when Erlinda failed to submit Eliseo's signed affidavit of waiver of rights.

Third, respondents paid the real property taxes on July 8, 1993, despite the alleged sale on April 30, 1992;[50] payment of real property taxes is a usual burden attaching to ownership and when, as here, such payment is coupled with continuous possession of the property, it constitutes evidence of great weight that the person under whose name the realty taxes were declared has a valid and rightful claim over the land.[51]

Fourth, Erlinda secured the payment of the principal debt owed to the petitioner with the subject property. The records show that the petitioner, in fact, sent Erlinda a Statement of Account showing that as of February 20, 1993, she owed ₱384,660.00, and the daily interest, starting February 21, 1993, was ₱641.10.[52] Thus, the parties clearly intended an equitable mortgage and not a contract of sale.

That the petitioner advanced the sum of ₱200,000.00 to Erlinda is undisputed. This advance, in fact, prompted the latter to transfer the subject property to the petitioner. Thus, before the respondents can recover the subject property, they must first return the amount of ₱200,000.00 to the petitioner, plus legal interest of 12% per annum, computed from April 30, 1992.

We cannot sustain the ballooned obligation of ₱384,660.00, claimed in the Statement of Account sent by the petitioner,[53] *sans* any evidence of how this amount was arrived at. Additionally, a daily interest of ₱641.10 or ₱19,233.00 per month for a ₱200,000.00 loan is patently unconscionable. While parties are free to stipulate on the interest to be imposed on monetary

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[50] Original Records, p. 174.

[51] *Lumayag v. Heirs of Jacinto Nemeño*, G.R. No. 162112, July 3, 2007, 526 SCRA 315, 327-328; *Go v. Bacaron*, G.R. No. 159048, October 11, 2005, 472 SCRA 339, 352.

[52] Original Records, p. 82.

[53] *Ibid*.

obligations, we can step in to temper the interest rates if they are unconscionable.[54]

In *Lustan v. CA*,[55] where we established the reciprocal obligations of the parties under an equitable mortgage, we ordered the reconveyance of the property to the rightful owner therein upon the payment of the loan within ninety (90) days from the finality of the decision.[56]

WHEREFORE, in light of all the foregoing, we hereby *DENY* the present petition. The assailed decision and resolution of the Court of Appeals in CA-G.R. CV No. 57126 are *AFFIRMED* with the following *MODIFICATIONS*:

1. The Deed of Absolute Sale dated April 30, 1992 is hereby declared an equitable mortgage; and

2. The petitioner is obligated to RECONVEY to the respondents the property covered by Transfer Certificate of Title No. 7650 of the Register of Deeds of Mandaluyong City, UPON THE PAYMENT OF ₱200,000.00, with 12% legal interest from April 30, 1992, by respondents within NINETY DAYS FROM THE FINALITY OF THIS DECISION.

Costs against the petitioner.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

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[54] *Toring v. Ganzon-Olan*, G.R. No. 168782, October 10, 2008, 568 SCRA 376, 383.

[55] 334 Phil. 609 (1997).

[56] *Id.* at 620. See also *Bacungan v. Court of Appeals*, *supra* note 47, at 650.

THIRD DIVISION

[G.R. No. 159275. August 25, 2010]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **THE HON. SANDIGANBAYAN (SECOND DIVISION), RICARDO C. SILVERIO, FERDINAND E. MARCOS (now substituted by his heirs), IMELDA R. MARCOS and PABLO P. CARLOS, JR. (now substituted by his heirs),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE REMEDY 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; EXCEPTIONS.— 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. This rule, though, has certain exceptions: (1) when the issue raised is purely of law, (2) when public interest is involved, or (3) in cases of urgency. As a fourth exception, the Court has also ruled that the filing of a motion for reconsideration before availment of the remedy of *certiorari* is not a *sine qua non*, when the questions raised are the same as those that have already been squarely argued and exhaustively passed upon by the lower court. Aside from the public interest involved in the recovery of alleged ill-gotten wealth by the Government, it was shown that the issue herein raised by petitioner had already been squarely argued by it and amply discussed by public respondent in its assailed resolution. Hence, the requirement of prior filing of a motion for reconsideration may be dispensed with.

2. ID.; ID.; ID.; APPROPRIATE REMEDY TO ASSAIL AN INTERLOCUTORY ORDER; CONDITIONS.— An order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining

their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is interlocutory. *Certiorari* is an appropriate remedy to assail an interlocutory order (1) when the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion; and (2) when the assailed interlocutory order is patently erroneous, and the remedy of appeal would not afford adequate and expeditious relief. Recourse to a petition for *certiorari* to assail an interlocutory order is now expressly recognized in the ultimate paragraph of Section 1, Rule 41 of the Revised Rules of Court on the subject of appeal, which states: In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

3. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; CONSTRUED; PRESENT IN CASE AT BAR.— The term "grave abuse of discretion" connotes capricious and whimsical exercise of judgment as is equivalent to excess, or a lack of jurisdiction. The abuse must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. Public respondent gravely abused its discretion in disallowing the presentation of additional evidence by the petitioner after the latter made a formal offer of documentary evidence, at the time the respondents had not even commenced the presentation of their evidence. Such arbitrary denial of petitioner's motion to reopen for presentation of additional evidence would result in serious miscarriage of justice as it deprives the Republic of the chance to fully prove its case against the respondents and recover what could be "illegally-gotten" wealth.

4. ID.; CIVIL PROCEDURE; ORDER OF TRIAL; RELAXATION OF THE RULE IS PERMITTED IN SOUND DISCRETION OF THE COURT; SUSTAINED; APPLICATION.— Admission of additional evidence is addressed to the sound discretion of the trial court. Indeed, in the furtherance of justice, the court may grant the parties the opportunity to adduce additional evidence bearing upon the main issue in question. The remedy of reopening a case for presenting further proofs was meant to prevent a miscarriage of justice. While it is true

that the 1997 Rules of Civil Procedure, as amended, prescribed an order of trial (Section 5, Rule 30), relaxation of the rule is permitted in sound discretion of the court. According to Justice Jose Y. Feria in his annotations on civil procedure: After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but, it has been held, the court, for good reasons in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. So, generally, additional evidence is allowed when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered. x x x Executive Order No. 14, series of 1986, issued by former President Corazon C. Aquino, provided that technical rules of procedure and evidence shall not be strictly applied to cases involving ill-gotten wealth. *Apropos* is our pronouncement in *Republic v. Sandiganbayan (Third Division)*: **In all cases involving alleged ill-gotten wealth brought by or against the Presidential Commission on Good Government, it is the policy of this Court to set aside technicalities and formalities that serve merely to delay or impede their judicious resolution**. This Court prefers to have such cases resolved on the merits before the Sandiganbayan. Substantial justice to all parties, not mere legalisms or perfection of form, should now be relentlessly pursued. Eleven years have passed since the government started its search for and reversion of such alleged ill-gotten wealth. The definitive resolution of such cases on the merits is thus long overdue. If there is adequate proof of illegal acquisition, accumulation, misappropriation, fraud or illicit conduct, let it be brought out now. Let the titles over these properties be finally determined and quieted down with all reasonable speed, free of delaying technicalities and annoying procedural sidetracks. It was incumbent upon the public respondent to adopt a liberal stance in the matter of procedural technicalities. More so in the instant case where the showing of a *prima facie* case of ill-gotten wealth was sustained by this Court in *Silverio v. Presidential Commission on Good Government* in G.R. No. 77645 under the Resolution dated October 26, 1987. Petitioner should be given the opportunity to fully present its evidence and prove that the various business interests of respondent Silverio "have enjoyed

considerable privileges obtained from [respondent] former President Marcos during [the latter's] tenure as Chief Executive in violation of existing laws; privileges which could not have been so obtained were it not for the close association of [Silverio] with the former President." No element of surprise could have been intended in the motion to reopen considering that these documentary exhibits were either certified copies of the originals in the custody of the PCGG, properly identified by the witness who prepared the same (Godofredo dela Paz) and statements under oath from a testimony given before the US District Court by respondent Silverio himself.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Quisumbing Torres for Ricardo Silverio.

Dominador Santiago for Administrator of Pablo P. Carlos, Jr.

Robert A.C. Sison for Imelda Marcos.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for *certiorari* seeks to annul and set aside the June 9, 2003 Resolution[1] of public respondent Sandiganbayan (Second Division) which denied the motion to reopen for presentation of plaintiff's additional evidence filed by the Republic of the Philippines.

The factual antecedents:

On July 22, 1987, petitioner through the Presidential Commission on Good Government (PCGG), instituted SB Civil Case No. 0011 for reconveyance, reversion, accounting, restitution and damages, entitled "*Republic of the Philippines v. Ferdinand E. Marcos, Imelda R. Marcos, Ricardo C. Silverio and Pablo*

[1] *Rollo*, pp. 32-35. Penned by Associate Justice Edilberto G. Sandoval and concurred in by Associate Justices Godofredo L. Legaspi and Raoul V. Victorino.

P. Carlos, Jr." Petitioner seeks to recover ill-gotten wealth acquired or accumulated by the said respondents either singly or collectively, and includes charges of misappropriation and theft of public funds; plunder of the nation's wealth; extortion; blackmail; bribery; embezzlement and other acts of corruption; betrayal of public trust; and abuse of power, to the grave and irreparable damage of petitioner.

Private respondents Silverio and Carlos, Jr. were specifically charged with the following acts:

a) gave to above Defendant spouses improper payments such as kickbacks and/or commissions in hundreds of thousands of US dollars in exchange for an award to Defendant Ricardo C. Silverio of Kawasaki Scrap Loaders and Toyota Rear Dump Trucks, respectively;

b) received annually, for three consecutive years, special accommodations, privileges and exemptions by the Central Bank in the form of (i) increased dollar import quota allocation for the importation of Toyota vehicles for Delta Motors[,] Inc., and airconditioning and refrigerating equipment in excess of the limits prescribed under applicable Central Bank Rules and Regulations, and (ii) a more liberal mode of payment (*i.e.*, documents against acceptance (D/A) *vs*. letter of credit (L/C) arrangement) contrary to Central Bank Rules and Regulations and to the manifest disadvantage of Plaintiff and the Filipino people;

c) obtained huge amounts in loans, guarantees and other types of credit accommodations under favored and very liberal terms of credit from government financial institution, such as the Philippine National Bank, to finance the establishment, operation and working capital requirements of his various business/financial ventures, more particularly, the Delta Motors Corporation, to the serious detriment of Plaintiff and the Filipino people;

d) was extended preferential status and treatment in the implementation of the Government's Progressive Car Manufacturing Program (PCMP) resulting in (i) unfair advantage to Defendant Ricardo C. Silverio, (ii) unjust and improper discrimination against the other participants in

the PCMP, and (iii) the ultimate demise of PCMP, to the grave damage and prejudice of Plaintiff and the Filipino people;

e) obtained from the Central Bank multi-million peso emergency loans as additional capital infusion to Filipinas Bank, a commercial banking institution owned and/or controlled by Defendant Ricardo C. Silverio;

f) acted as dummy, nominee or agent of Defendants Ferdinand E. Marcos and Imelda R. Marcos in several corporations where said Defendants have substantial interests such as the Meralco Securities and the First Philippine Holdings Corporation and, with the active collaboration, knowledge and willing participation of Fe Roa Gimenez and Hector Rivera who served as conduit for the receipt of funds from said corporations. Defendants Fe Roa Gimenez and Hector Rivera are subjects of separate suits.[2]

After the presentation of its witnesses Godofredo dela Paz (Bank Officer III, Bangko Sentral ng Pilipinas) and Ma. Lourdes O. Magno (PCGG Librarian), petitioner rested its case. In its Formal Offer of Evidence dated October 18, 2001, petitioner submitted only the following documents:

EXH. A - Resolution of the Supreme Court promulgated on October 26, 1987, in G.R. No. 77645 entitled "*Ricardo Silverio, petitioner, versus Presidential Commission on Good Government, respondent*."

Purpose: To show that there is a *prima facie* case against the defendant Ricardo Silverio, *i.e.*, defendant has acquired assets and properties manifestly out of proportion to his usual and normal income.

EXH. B - Memorandum dated April 27, 1987, of Godofredo dela Paz, re: Import Quota Allocations Granted to Delta Motors Corporation (DMC)

EXH. B-1 - Signature of Godofredo dela Paz appearing on page 3 of Exh. B.

Purpose: To show that Delta Motors Corporation, a corporation 96% owned by defendant Ricardo Silverio, was

[2] Sandiganbayan records, Vol. I, pp. 11-14.

granted exemptions by the Central Bank in the matter of importing motor vehicles and air conditioning and refrigeration equipment because of said defendant's close association with former President Ferdinand Marcos.

EXH. C - A certification dated August 25, 1967, signed by defendant Ricardo Silverio whereby defendant committed himself to pay $499,500.00 to someone, in consideration of his arrangements for making possible the award to defendant of 1,000 units of Toyota rear dump trucks.

EXH. C-1 - Signature of defendant Ricardo Silverio appearing at the bottom of Exh. C-1.

Purpose: To show that defendant Ricardo Silverio gave to former President Marcos improper payments in exchange for an award to defendant of Toyota rear dump trucks.

EXH. D - A certification dated August 25, 1967, signed by defendant Ricardo Silverio whereby defendant committed himself to pay $290,000.00 to someone, in consideration of his arrangements for making possible the award to defendant of 200 units Kawasaki Scoop loaders.

EXH. D-1 - Signature of defendant Ricardo Silverio appearing at the bottom of Exh. D.

Purpose: To show that defendant Ricardo Silverio gave to former President Marcos improper payments in exchange for an award to defendant of Kawasaki Scoop loaders.

EXH. E - Letter dated May 10, 1980, of Ricardo Silverio addressed to President Ferdinand E. Marcos.

Purpose: To show that the enterprises ostensibly owned by Ricardo Silverio, *e.g.* Filipinas Bank and Delta Motors Corp., are beneficially owned and controlled by former President Ferdinand Marcos.[3]

Acting on the formal offer of evidence by the petitioner, as well as the comments/oppositions respectively filed by respondents Silverio, Carlos, Jr. and Marcos, public respondent issued a Resolution[4] on January 10, 2002 admitting only Exhibit "A"

[3] *Rollo,* pp. 51-52.

[4] *Id.* at 56-62.

and denying admission of Exhibits "B" to "E" for being mere photocopies and irrelevant to the purpose for which they were offered, and failure to prove the due execution and authenticity of private writings. Nonetheless, the documents not admitted were allowed to remain on the records.

On February 4, 2002, petitioner filed a Motion for Extension of Time to File Motion for Reconsideration,[5] expressing its intention to file a Consolidated Motion for Reconsideration with Motion to File Supplement to Formal Offer of Evidence.

On February 26, 2002, petitioner filed a Motion to Admit Herein Motion for Reconsideration with Supplement to Formal Offer of Evidence[6] setting forth the following arguments: (a) Technical rules should be set aside when necessary to achieve the purposes behind PCGG's creation; (b) The best evidence rule does not apply since the contents of the writings are not in issue; (c) Assuming *arguendo* that the best evidence rule applies, then secondary evidence may be availed of when the original writing itself is unavailable and cannot be produced in court; and (d) Exhibits "B" and "B-1" are admissible because they are relevant in establishing the fact that defendant Silverio was granted accommodations by reason of his close association with former President Marcos.[7]

In a Resolution[8] dated May 21, 2002, public respondent denied petitioner's Motion to Admit Herein Motion for Reconsideration with Supplement to Formal Offer of Evidence. It held that the petitioner was unable to establish the loss or destruction of the original documents and hence it cannot be permitted to present secondary evidence as required under Rule 130 of the Rules of Court. That the best evidence rule applies in this case is demonstrated by petitioner's own purpose in offering the rejected

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[5] *Id.* at 63-65.

[6] *Id.* at 66-75.

[7] *Id.* at 66-67.

[8] *Id.* at 77-83. Penned by Associate Justice Godofredo L. Legaspi and concurred in by Associate Justices Edilberto G. Sandoval and Raoul V. Victorino.

documentary exhibits for how then can it intend to prove the defendants' close business/personal relationship with defendant Ferdinand E. Marcos without inquiring into the contents thereof. Moreover, citing Section 19 of Rule 132, public respondent declared that the mere fact that the subject documents "form part of the public records of private documents in the possession of PCGG, [which were] required by law to be entered therein," does not necessarily make them public documents; none of the exhibits offered by the petitioner is required by any law to be entered in a public record. As to Exhibits "B" and "B-1", even if properly identified by Godofredo dela Paz, the one (1) who executed the same, still the court rejected these evidence on the ground that the same were mere photocopy and the offeror failed to lay the basis for the introduction of secondary evidence, again in violation of the best evidence rule.[9]

On September 25, 2002, petitioner filed a Motion to Reopen Plaintiff's Presentation of Evidence[10] stating thus:

> 7. That on July 11, 2002, while preparing the files of PCGG documentary evidence for computer scanning, PCGG Librarian Ma. Lourdes Magno **discovered the original copies of certain documentary evidence relevant to this case misfiled in a different case folder,** thus, their availability now for presentation. The affidavit of Ma. Lourdes Magno dated September 23, 2002 is hereto attached as Annex "A". Considering the voluminous records and documents involved in the numerous ill-gotten wealth cases initiated by the PCGG, such incident should understandably be unavoidable. It bears emphasis that **these documents were among those enumerated in the Pre-Trial Brief.**
>
> Attached herewith are **certified true copies** of the said documents, the originals of which will be presented in the course of the proceedings, to wit:
>
> (a) Memorandum of Godofredo dela Paz dated 27 April 1987 (Annex "B" hereof) which was marked as plaintiff's Exhibit "B" in its Formal Offer of Evidence;

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[9] *Id.* at 80-82.

[10] *Id.* at 84-101.

(b) Delta Motor[s] Corporation stock certificate for 10,000 shares issued to defendant Silverio; (Annex "C" hereof) which was marked as plaintiff's Exhibit "J" in its Pre-Trial Brief;

(c) Philippine American Investments Corporation stock certificate for 10,000 shares issued to Jose P. Madrigal (Annex "D" hereof) which was marked as plaintiff's Exhibit "I" in its Pre-Trial Brief;

(d) Lepanto Consolidated Mining stock certificate for 3,183,750 shares issued to Fairmont Real Estate[,] Inc. (Annex "E" hereof) which was marked as plaintiff's Exhibit "H" in its Pre-Trial Brief;

(e) Meralco stock certificate for 1,566 shares issued to defendant Silverio (Annex "F" hereof) which was marked as plaintiff's Exhibit "C" in its Pre-Trial Brief;

(f) Meralco stock certificate for 1,175 shares issued to defendant Silverio (Annex "G" hereof) which was marked as plaintiff's Exhibit "D" in its Pre-Trial Brief;

(g) Meralco stock certificate for 1,175 shares issued to defendant Silverio (Annex "H" hereof) which was marked as plaintiff's Exhibit "C" in its Pre-Trial Brief; and

(h) letter of Silverio to former President Ferdinand E. Marcos dated 10 May 1980 (Annex "I" hereof) which was marked as plaintiff's Exhibit "E" in its Formal Offer of Evidence.

Attached also as Annexes are certified photocopies of Silverio's Letter dated 2 January 1974 (Annex "J") and an Insular Minerals Exploration Hinobaan Copper Project Timetable (Annex "K" hereof).

Plaintiff intends to **recall Ma. Lourdes O. Magno as its witness** to testify on the existence of the foregoing documents.

8. Further to prove its case against defendants, plaintiff also intends to present as **additional evidence the relevant contents of the transcript of defendant Silverio's direct testimony in the case of *US v. Imelda Marcos and Adnan Kashoggi*, before the US District Court, Southern District of New York** (SSS87, Cr 0598 [JFK]), particularly on the following facts:

a. The personal help given by Ferdinand Marcos to defendant Silverio regarding the approval of an SSS loan;

b. The corresponding transfer of shares of Delta Motors Corporation from defendant Silverio to Ferdinand Marcos then valued at $900,000;

c. Defendant Silverio's receipt and endorsement in blank of shares of Meralco Securities and First Philippine Holdings Corp. which were then given to a certain Mr. Fontanilla, one of the secretaries of Mr. Roberto Benedicto, and which were then delivered to Mr. Marcos;

d. Delivery of cash dividends to Fe Roa Gimenez in Malacañang Palace; and,

e. The 15% commission of Mr. Marcos out of the $6,000,000 from the Reparations Commission, among others.

Plaintiff intends to make the necessary request for admission of such additional vital evidence, since the purpose of the rule governing requests for admissions of facts and genuineness of documents is to expedite trial and to 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.

Attached herewith as Annex "L" is the **letter dated August 27, 2002 of the Presidential Commission on Good Government addressed to Monger, Tolles and Olsen, its counsel in the aforementioned case, requesting for authenticated and certified true copy of the transcript of stenographic notes in the said case.**

On the basis of the foregoing, plaintiff respectfully seeks to reopen the case for the presentation of its additional evidence.[11] (Emphasis supplied.)

Respondent Silverio filed his Opposition[12] asserting that the grounds cited by petitioner do not warrant a reopening of the presentation of evidence. Assuming that petitioner identified the "misfiled" documents in its pre-trial brief, still petitioner's

[11] *Id.* at 89-92.

[12] *Id.* at 365-375.

failure to present the same was due to gross and inexcusable negligence. He further pointed out that Atty. Edgardo L. Kilayko of the PCGG categorically declared at the September 18, 2001 hearing that petitioner had no other evidence apart from those already marked. He claimed that the timing of the discovery of the "misfiled" documents is highly suspect, after the court rejected these "certain documents" and only after fourteen (14) years since the case was filed when petitioner should have already gathered, prepared and presented its evidence.

In its Reply[13] to Opposition, petitioner argued that the paramount interest of justice, the recovery of ill-gotten wealth declared as an overriding policy of State under Executive Order Nos. 1, 2, 14 and 14-A, requires that petitioner Republic be granted the opportunity to present the originals of the exhibits it earlier presented, in compliance with the court's lawful order when it denied admission of mere photocopies of the same when they were first formally offered. Petitioner also stressed that respondent Silverio's right to speedy trial was not violated as there was no unreasonable request for postponement of the trial but a supplication for the reopening of the case to present additional evidence to protect the State's interest, the additional evidence sought to be offered being relevant and material to petitioner's case. Aside from the originals of the exhibits earlier formally offered, as well as documents listed in the Pre-Trial Brief, petitioner seeks to present in evidence respondent Silverio's own testimony in the case of *US v. Imelda Marcos and Adnan Kashoggi* wherein he testified to matters referred to in petitioner's Motion to Reopen the presentation of evidence in this case; these are very material as they contain statements given by respondent Silverio under oath in a US District Court referring to acts and documents concerning the very allegations sought to be established by petitioner in this case. There can be no cries of surprise on the part of respondent Silverio since everything sought to be introduced are of public records, and as for aforementioned testimony, based on his own personal knowledge.

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[13] *Id.* at 376-382.

On June 9, 2003, public respondent issued the assailed Resolution[14] denying the Motion to Reopen Plaintiff's Presentation of Evidence, as follows:

> WE view the motion more of the nature of a plea to reconsider our resolution denying the admission of Exhibits "B" to "E". Thus, the prayer is to allow to present additional witness and/or to recall witness to establish the existence and execution of the original copies of Exhibits "B" to "E". *If we afford affirmative relief to the motion, it will render completely ineffective and totally at naught our Resolution denying the admission of these exhibits with all the grounds redoubtable as they are, spelled out in our Resolution. Our Resolution admitting only Exhibits "B" to "E" (sic) has long become final and executory and the issues in connection thereto has long been laid to rest.* WE cannot allow it to be revived on the pretext of another motion captioned differently without doing violence to the settled rule of finality of orders or decision. Worse everything would be an endless rigmarole without any end of the proceedings on sight.
>
> Moreover, the documents and proofs alleged in the plaintiffs motion have been existing all along, some in fact as early as fourteen (14) years ago, and after these years of hearing, *the Court cannot just simply brush aside what had been taken up, and on the mere claim that those documents were "misfiled" and are now ready to be presented, reopen again the proceedings with all the adverse consequences to the time honored orderly presentation of evidence and the universally acclaimed expeditious, speedy and inexpensive disposition of all action[s] and proceedings.*
>
> WHEREFORE, for lack of merit, plaintiff's Motion to Reopen Plaintiff's Presentation of Evidence is denied.
>
> SO ORDERED.[15] (Italics supplied.)

Hence, this recourse *via certiorari* alleging grave abuse of discretion in the denial of petitioner's motion to reopen presentation of plaintiff's evidence.

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[14] *Id.* at 32-35.

[15] *Id.* at 34-35.

On November 10, 2003, we granted petitioner's urgent motion for issuance of a temporary restraining order and directed public respondent to refrain from acting on and/or taking cognizance of the Motion to Dismiss by way of Demurrer to Evidence (Motion to Dismiss) filed by respondent Silverio, and from enforcing its June 9, 2003 Resolution denying petitioner's motion to reopen for presentation of additional evidence and its Order given in open court on August 1, 2003 submitting SB Civil Case No. 0011 for resolution, until further orders from this Court.[16]

Petitioner submits that contrary to the ruling of public respondent, resolutions denying admissibility to petitioner's documentary exhibits, as well as the subject resolution denying the motion to present additional evidence, were not final orders which may no longer be disturbed. Citing the case of *Looyuko v. Court of Appeals*,[17] petitioner points out that before judgment is rendered and for good cause shown, the court may still allow the introduction of additional evidence, and that is still within a liberal interpretation of the period for trial. Since no judgment has yet been rendered in SB Civil Case No. 0011, the presentation of additional evidence may still be resolved by public respondent and integrated in the judgment disposing of all the claims in the said case.[18]

As to the length of time for the trial of the case, petitioner maintains that it is not fair to attribute delay solely to it; presentation of plaintiff's evidence was only terminated in 2002 when petitioner filed its formal offer of evidence, which public respondent denied. The presentation of additional evidence will not cause substantial injustice to respondent Silverio as these documents and the witnesses to be recalled were all declared in petitioner's Pre-Trial Brief, while the testimony in a foreign court is none other than that of respondent Silverio, confirming material facts, which are the subject of SB Civil Case No. 0011.

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[16] *Id.* at 160-161.

[17] G.R. Nos. 102696, 102716, 108257 & 120954, July 12, 2001, 361 SCRA 150.

[18] *Rollo,* p. 24.

On the other hand, disallowing the presentation of additional evidence would cause undue prejudice to petitioner's case.[19]

Respondent Silverio reiterates that public respondent did not gravely abuse its discretion in denying petitioner's motion which it claims will enable it to present the originals of the exhibits earlier offered for admission but only two (2) actually relates to the exhibits it had already offered in evidence. Public respondent court had denied admission to these two (2) exhibits not only because they violated the Best Evidence Rule but also because they are irrelevant and not properly authenticated. It is argued that the policy of relaxing the technical rules of procedure in cases of recovery of ill-gotten wealth is not a license to disregard the fundamental Rules of Evidence. As to the testimony given by respondent Silverio, petitioner had said that the same was given wayback in 1990 or twelve (12) years ago. Hence, it was available to the Republic long before it drafted its Pre-trial Brief and before it commenced presentation of evidence. Petitioner's failure to present the alleged testimony of respondent Silverio is gross and inexcusable negligence and therefore cannot be a ground to reopen the case. Petitioner's asseveration that to reopen the proceedings to allow it to present additional evidence would not cause substantial injustice to respondent Silverio cannot be serious. If twenty (20) years of long litigation is not harassment and injustice, respondent Silverio does not know what is. Respondent Silverio also points out that the Republic's pre-trial brief dated September 1990 was superseded by the February 23, 1996 Pre-Trial Brief wherein petitioner makes no reference to any of the "misfiled" documents, and hence petitioner is now precluded from presenting such "misfiled" documents.[20]

We grant the petition.

First, on petitioner's immediate resort to this Court without filing a motion for reconsideration with the public respondent of the assailed resolution denying its motion to reopen for presentation of additional evidence.

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[19] *Id.* at 25.

[20] *Id.* at 505-506, 520, 527.

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.[21] This rule, though, has certain exceptions: (1) when the issue raised is purely of law, (2) when public interest is involved, or (3) in cases of urgency. As a fourth exception, the Court has also ruled that the filing of a motion for reconsideration before availment of the remedy of *certiorari* is not a *sine qua non,* when the questions raised are the same as those that have already been squarely argued and exhaustively passed upon by the lower court.[22]

Aside from the public interest involved in the recovery of alleged ill-gotten wealth by the Government, it was shown that the issue herein raised by petitioner had already been squarely argued by it and amply discussed by public respondent in its assailed resolution. Hence, the requirement of prior filing of a motion for reconsideration may be dispensed with.

Contrary to public respondent's posture, its order denying admission to petitioner's documentary exhibits, as well as the denial of the motion to reopen for presentation of additional evidence for plaintiff, was merely interlocutory. An order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is interlocutory.[23]

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[21] *Republic v. Sandiganbayan,* G.R. Nos. 141796 & 141804, June 15, 2005, 460 SCRA 146, 158, citing *Yau v. Manila Banking Corporation,* G.R. Nos. 126731 & 128623, July 11, 2002, 384 SCRA 340, 348.

[22] *Government of the United States of America v. Purganan,* G.R. No.148571, September 24, 2002, 389 SCRA 623, 650, citing *Phil. Air Lines Employees Association v. Phil. Air Lines, Inc.,* G.R. No. L-31396, January 30, 1982, 111 SCRA 215, 219 and *Progressive Development Corporation, Inc. v. Court of Appeals,* G.R. No. 123555, January 22, 1999, 301 SCRA 637, 647.

[23] *Investments, Inc. v. Court of Appeals,* G.R. No. 60036, January 27, 1987, 147 SCRA 334, 340, cited in *United Overseas Bank (formerly Westmont*

Certiorari is an appropriate remedy to assail an interlocutory order (1) when the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion; and (2) when the assailed interlocutory order is patently erroneous, and the remedy of appeal would not afford adequate and expeditious relief.[24] Recourse to a petition for *certiorari* to assail an interlocutory order is now expressly recognized in the ultimate paragraph of Section 1, Rule 41 of the Revised Rules of Court on the subject of appeal, which states:[25]

> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Public respondent seriously erred in denying the motion to reopen for presentation of additional evidence on the basis of the supposed "final and executory" ruling which denied admission of Exhibits "B" to "E" in the Formal Offer of Evidence filed by the petitioner. Admission of additional evidence is addressed to the sound discretion of the trial court. Indeed, in the furtherance of justice, the court may grant the parties the opportunity to adduce additional evidence bearing upon the main issue in question.[26] The remedy of reopening a case for presenting further proofs was meant to prevent a miscarriage of justice.[27]

While it is true that the 1997 Rules of Civil Procedure, as amended, prescribed an order of trial (Section 5, Rule 30), relaxation of the rule is permitted in sound discretion of the

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Bank) v. Ros, G.R. No. 171532, August 7, 2007, 529 SCRA 334, 344.

[24] *Santos v. People*, G.R. No. 173176, August 26, 2008, 563 SCRA 341, 361-362, citing *Casil v. CA*, 349 Phil. 187, 196-197 (1998).

[25] *Id.* at 362.

[26] *Valencia v. Sandiganbayan*, G.R. No. 165996, October 17, 2005, 473 SCRA 279, 290, citing *United States v. Gallegos*, 37 Phil. 289, 293-294 (1917). See also *People v. Tee*, G.R. Nos. 140546-47, January 20, 2003, 395 SCRA 419, 444.

[27] See *Cabarles v. Maceda,* G.R. No. 161330, February 20, 2007, 516 SCRA 303, 315, citing II F. Regalado, *REMEDIAL LAW COMPENDIUM*, 551 (10th ed., 2004).

court. According to Justice Jose Y. Feria in his annotations on civil procedure:

> After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but, it has been held, the court, for good reasons in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. So, generally, additional evidence is allowed when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered.[28]

Considering that petitioner, in requesting to reopen the presentation of additional evidence after it has rested its case, sought to present documentary exhibits consisting of certified copies which had earlier been denied admission for being photocopies, additional documents previously mentioned in its pre-trial brief and new additional evidence material in establishing the main issue of ill-gotten wealth allegedly amassed by the private respondents, singly or collectively, public respondent should have, in the exercise of sound discretion, properly allowed such presentation of additional evidence. Bearing in mind that even if the originals of the documentary exhibits offered as additional evidence have been in the custody of the PCGG since the filing of the complaint or at least at the time of the preparation of its original pre-trial brief in September 1990, public respondent should have duly considered the explanation given by PCGG Commissioner Ruben C. Carranza and PCGG Librarian Ma. Lourdes O. Magno in their respective affidavits[29] attached to the motion, as to the belated discovery of the original documentary evidence which had long been in the possession of PCGG. Given the voluminous documents and papers involved in ill-gotten

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[28] Jose Y. Feria and Maria Concepcion S. Noche, *CIVIL PROCEDURE ANNOTATED*, 2001 Edition, Vol. I, p. 574, citing *Lopez v. Liboro,* 81 Phil. 429, 434 (1948). See also *Rivera v. Palattao,* G.R. No. 157824, January 17, 2005, 448 SCRA 623, 635.

[29] *Rollo,* pp. 339-343.

wealth cases, it was indeed unavoidable that in the course of trial certain documentary exhibits were omitted or unavailable by inadvertence, as what had happened in this case where the subject original documentary evidence were found misfiled in a different case folder.

Lamentably, public respondent peremptorily denied petitioner's plea for a chance to present additional evidence vital to its case, saying that it cannot "just simply brush aside what had been taken up [after these years of hearing]," and even alluding to the supposed "adverse consequences to the time honored orderly presentation of evidence and the universally acclaimed expeditious, speedy and inexpensive disposition of all action[s] and proceedings." On the other hand, respondent Silverio contended that allowing the motion to reopen would only cause him to suffer further "harassment and injustice." However, perusal of the records plainly reveals that petitioner was not responsible for the delay in the prosecution of this case. The protracted litigation was due to the numerous pleadings, postponements and various motions filed by respondents Marcoses. Clearly, public respondent's rigid application of the rule on order of trial was arbitrary, improper and in utter disregard of the demands of substantial justice.

Executive Order No. 14, series of 1986, issued by former President Corazon C. Aquino, provided that technical rules of procedure and evidence shall not be strictly applied to cases involving ill-gotten wealth. *Apropos* is our pronouncement in *Republic v. Sandiganbayan (Third Division)*:[30]

In all cases involving alleged ill-gotten wealth brought by or against the Presidential Commission on Good Government, it is the policy of this Court to set aside technicalities and formalities that serve merely to delay or impede their judicious resolution. This Court prefers to have such cases resolved on the merits before the Sandiganbayan. Substantial justice to all parties, not mere legalisms or perfection of form, should now be relentlessly pursued. Eleven years have passed since the government started its

[30] G.R. No. 113420, March 7, 1997, 269 SCRA 316, 334-335.

search for and reversion of such alleged ill-gotten wealth. The definitive resolution of such cases on the merits is thus long overdue. If there is adequate proof of illegal acquisition, accumulation, misappropriation, fraud or illicit conduct, let it be brought out now. Let the titles over these properties be finally determined and quieted down with all reasonable speed, free of delaying technicalities and annoying procedural sidetracks. (Emphasis supplied.)

It was incumbent upon the public respondent to adopt a liberal stance in the matter of procedural technicalities. More so in the instant case where the showing of a *prima facie* case of ill-gotten wealth was sustained by this Court in *Silverio v. Presidential Commission on Good Government* in No. L-77645 under the Resolution dated October 26, 1987.[31] Petitioner should be given the opportunity to fully present its evidence and prove that the various business interests of respondent Silverio "have enjoyed considerable privileges obtained from [respondent] former President Marcos during [the latter's] tenure as Chief Executive in violation of existing laws; privileges which could not have been so obtained were it not for the close association of [Silverio] with the former President."[32] No element of surprise could have been intended in the motion to reopen considering that these documentary exhibits were either certified copies of the originals in the custody of the PCGG, properly identified by the witness who prepared the same (Godofredo dela Paz) and statements under oath from a testimony given before the US District Court by respondent Silverio himself.

The term "grave abuse of discretion" connotes capricious and whimsical exercise of judgment as is equivalent to excess, or a lack of jurisdiction. The abuse must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised

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[31] 155 SCRA 60.

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

in an arbitrary and despotic manner by reason of passion or hostility.[33]

Public respondent gravely abused its discretion in disallowing the presentation of additional evidence by the petitioner after the latter made a formal offer of documentary evidence, at the time the respondents had not even commenced the presentation of their evidence. Such arbitrary denial of petitioner's motion to reopen for presentation of additional evidence would result in serious miscarriage of justice as it deprives the Republic of the chance to fully prove its case against the respondents and recover what could be "illegally-gotten" wealth.

WHEREFORE, the petition is hereby *GIVEN DUE COURSE* and the writ prayed for accordingly *GRANTED***.** The Resolution dated June 9, 2003 of the Sandiganbayan (Second Division) in SB Civil Case No. 0011 is hereby *ANNULLED* and *SET ASIDE*. Said court is hereby *DIRECTED* to *ALLOW* the Republic of the Philippines to present additional evidence and recall witnesses as prayed for in its Motion to Reopen Plaintiff's Presentation of Evidence with utmost dispatch.

The Temporary Restraining Order issued by this Court on November 10, 2003 is hereby *LIFTED and SET ASIDE*.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Sereno, JJ.,* concur.

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[33] *Republic v. Sandiganbayan (Second Division),* G.R. No. 129406, March 6, 2006, 484 SCRA 119, 127, citing *Litton Mills, Inc. v. Galleon Trader, Inc.*, No. L-40867, July 26, 1988, 163 SCRA 489, 494 and *Duero v. Court of Appeals*, G.R. No. 131282, January 4, 2002, 373 SCRA 11, 17.

SPECIAL SECOND DIVISION

[G.R. No. 165153. August 25, 2010]

CARLOS DE CASTRO, *petitioner, vs.* **LIBERTY BROADCASTING NETWORK, INC. and EDGARDO QUIOGUE,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PROBATIONARY EMPLOYMENT; CONSTRUED.— Article 281 of the Labor Code provides that "[p]robationary employment shall not exceed six (6) months from the date the employee started working, x x x [a]n employee who is allowed to work after a probationary period shall be considered a regular employee." As a regular employee, de Castro was entitled to security of tenure and his illegal dismissal from LBNI justified the awards of separation pay, backwages, and damages.

2. REMEDIAL LAW; ACTIONS; PLEADINGS; MEMORANDUM; PURPOSE THEREOF.— The filing of a memorandum before the Court is not an empty requirement, devoid of legal significance. In A.M. No. 99-2-04-SC, the Court declared that **issues raised in previous pleadings but not included in the memorandum shall be deemed waived or abandoned.** Being a summation of the parties' previous pleadings, the memoranda alone may be considered by the Court in deciding or resolving the petition. Thus, on account of LBNI's omission, only the issues raised in the parties' memoranda – principally, the validity of de Castro's dismissal from LBNI – were considered by the Court in resolving the case.

3. COMMERCIAL LAW; CORPORATION CODE; INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; REHABILITATION PLAN, REQUIRED; EFFECT OF FAILURE TO SUBMIT, EXPLAINED; CASE AT BAR.— Under Section 11, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation (*Interim Rules*), a petition for rehabilitation shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of 180 days from the

date of initial hearing. While the Interim Rules grant extension beyond the 180-day period, no such extension was alleged in this case; in fact, as we earlier pointed out, no mention at all was made in LBNI's memorandum of the rehabilitation proceedings. With the failure of LBNI to raise rehabilitation proceedings in its memorandum, the Court had sufficient grounds to suppose that the rehabilitation petition had been dismissed by the time the case was submitted for decision. Given these circumstances, the existence of the Stay Order – which would generally authorize the suspension of judicial proceedings, even those pending before the Court – could not have affected the Court's action on the present case. At any rate, a stay order simply suspends all actions for claims against a corporation undergoing rehabilitation; it does not work to oust a court of its jurisdiction over a case properly filed before it. Our ruling on the principal issue of the case – that de Castro had been illegally dismissed from his employment with LBNI – thus stands. x x x The suspension shall last up to the termination of the rehabilitation proceedings, as provided in Section 11, in relation to Section 27, Rule 4 of the Interim Rules – **Sec. 11. *Period of the Stay Order.* - The stay order shall be effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings.** The petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing. The court may grant an extension beyond this period only if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated. In no instance, however, shall the period for approving or disapproving a rehabilitation plan exceed eighteen (18) months from the date of filing of the petition. x x x 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.

APPEARANCES OF COUNSEL

Valentino V. Dionela and *Tan Acut Lopez & Pison* for petitioner.

Ensign M. Icamen for Liberty Broadcasting Network, Inc.

R E S O L U T I O N

BRION, *J.*:

The respondent, Liberty Broadcasting Network, Inc. (LBNI), filed the present Motion for Reconsideration with Motion to Suspend Proceedings, asking us, *first*, to set aside our Decision[1] and, *second*, to suspend the court proceedings in view of the Stay Order issued on August 19, 2005 by the Regional Trial Court (*RTC*) of Makati, Branch 138, in relation to the corporate rehabilitation proceedings that LBNI initiated.

The dispositive part of our Decision reads:

WHEREFORE, premises considered, we hereby **GRANT** the petition. Accordingly, we **REVERSE** and **SET ASIDE** the Decision and Resolution of the CA promulgated on May 25, 2004 and August 30, 2004, respectively, and **REINSTATE** in all respects the Resolution of the National Labor Relations Commission dated September 20, 2002. Costs against the respondents.

SO ORDERED.[2]

The facts, as recited in our Decision, are summarized below:

The petitioner, Carlos C. de Castro, worked as a chief building administrator at LBNI. On May 31, 1996, LBNI dismissed de Castro on the grounds of serious misconduct, fraud, and willful

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[1] *De Castro v. Liberty Broadcasting Network, Inc.*, G.R. No. 165153, September 23, 2008, 566 SCRA 238.

[2] *Id.* at 251-252.

breach of the trust reposed in him as a managerial employee. Allegedly, de Castro committed the following acts:

1. Soliciting and/or receiving money for his own benefit from suppliers/dealers/traders [Cristino Samarita and Jose Aying], representing "commissions" for job contracts involving the repair, reconditioning and replacement of parts of the airconditioning units at the company's Antipolo Station, as well as the installation of fire exits at the [LBNI's] Technology Centre;

2. Diversion of company funds by soliciting and receiving on different occasions a total of ₱14,000.00 in "commissions" from Aying for a job contract in the company's Antipolo Station;

3. Theft of company property involving the unauthorized removal of one gallon of Delo oil from the company storage room;

4. Disrespect/discourtesy towards a co-employee, for using offensive language against [Vicente Niguidula, the company's supply manager];

5. Disorderly behavior, for challenging Niguidula to a fight during working hours within the company premises, thereby creating a disturbance that interrupted the normal flow of activities in the company;

6. Threat and coercion, for threatening to inflict bodily harm on the person of Niguidula and for coercing [Gil Balais], a subordinate, into soliciting money in [de Castro's] behalf from suppliers/contractors;

7. Abuse of authority, for instructing Balais to collect commissions from Aying and Samarita, and for requiring Raul Pacaldo (*Pacaldo*) to exact 2% - 5% of the price of the contracts awarded to suppliers; and

8. Slander, for uttering libelous statements against Niguidula.[3]

Aggrieved, de Castro filed a complaint for **illegal dismissal** against LBNI with the National Labor Relations Commission

[3] *Id.* at 241-242.

(*NLRC*) Arbitration Branch, National Capital Region, praying for reinstatement, payment of backwages, damages, and attorney's fees.[4] He maintained that he could not have solicited commissions from suppliers considering that he was new in the company.[5] Moreover, the accusations were belatedly filed as the imputed acts happened in 1995. He explained that the one gallon of Delo oil he allegedly took was actually found in Gil Balais' room.[6] He denied threatening Vicente Niguidula, whom he claimed verbally assaulted him and challenged him to a fight, an incident which he reported to respondent Edgardo Quiogue, LBNI's executive vice president, and to the Makati police.[7] De Castro alleged that prior to executing affidavits against him, Niguidula and Balais had serious clashes with him.[8]

On April 30, 1999, the Labor Arbiter rendered a decision[9] in de Castro's favor, holding LBNI **liable for illegal dismissal.**[10] The Labor Arbiter found the affidavits of LBNI's witnesses to be devoid of merit, noting that (1) witnesses Niguidula and Balais had altercations with de Castro prior to the execution of their respective affidavits; (2) the affidavit of Cristino Samarita, one of the suppliers from whom de Castro allegedly asked for commissions, stated that it was not de Castro, but Balais, who personally asked for money; and (3) Jose Aying, another supplier, recanted his earlier affidavit.[11]

LBNI appealed the Labor Arbiter's ruling to the NLRC. Initially, the NLRC reversed the Labor Arbiter's decision but on de Castro's motion for reconsideration, the NLRC **reinstated the Labor Arbiter's decision.**[12] It ruled that the charges against de Castro

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[4] *Rollo,* p. 46.

[5] *Id.* at 48.

[6] *Id.* at 49.

[7] *Ibid.*

[8] *Ibid.*

[9] *Id.* at 46-55.

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

[11] *Id.* at 50-51.

[12] NLRC Resolution, *id.* at 73-85.

"were never really substantiated other than by 'bare allegations' in the witnesses' affidavits who were the company's employees and who had altercations with De Castro prior to the execution of their affidavits."[13]

LBNI again appealed the NLRC's adverse decision to the Court of Appeals (*CA*). On May 25, 2004, the CA **reversed the NLRC's decision** and held that de Castro's dismissal was based on valid grounds. It ruled too that the NLRC gravely abused its discretion when it disregarded the affidavits of all of LBNI's witnesses.[14]

In our September 23, 2008 Decision, we found that de Castro's dismissal was based on unsubstantiated charges. Aying, a contractor, earlier executed an affidavit stating that de Castro asked him for commission, but in his second affidavit, he recanted his statement and exonerated de Castro.[15] The other witnesses, Niguidula and Balais, were LBNI employees who resented de Castro.[16] We noted that de Castro had not stayed long in the company and had not even passed his probationary period when the acts charged allegedly took place. We found this situation contrary to common experience, since new employees have a natural motivation to make a positive first impression on the employer, if only to ensure that they are regularized.[17]

Thus, we ruled that the grounds that LBNI invoked for de Castro's dismissal were, at best, doubtful, based on the evidence presented. These doubts should be interpreted in de Castro's favor, pursuant to Article 4 of the Labor Code.[18] Between a laborer and his employer, doubts reasonably arising from the

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[13] *Id.* at 83.

[14] CA Decision, *id.* at 190-199.

[15] *Supra* note 1, at 249-250.

[16] *Ibid.*

[17] *Id.* at 248.

[18] Art. 4. Construction in favor of Labor. – All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.

evidence or interpretation of agreements and writing should be resolved in the former's favor.[19]

The Motion for Reconsideration

LBNI now moves for a reconsideration of our September 23, 2008 Decision based on the following arguments: (1) LBNI had valid legal grounds to terminate de Castro's employment for loss of trust and confidence;[20] (2) the affidavits of LBNI's witnesses should not have been totally disregarded;[21] and (3) LBNI is currently under rehabilitation, hence, the proceedings in this case must be suspended.[22] LBNI points out that it filed, with the RTC of Makati, a petition for Corporate Rehabilitation with Prayer for Suspension of Payments (docketed as S.P. Proc. Case No. M-6126), and on August 19, 2005, the RTC issued a Stay Order directing, among others, that the –

> **enforcement of all claims against** Liberty Telecoms, Liberty Broadcasting and Skyphone**,** whether for money or otherwise and whether such enforcement is by Court action or otherwise x x x **be forthwith stayed.**[23]

Comment on the Motion for Reconsideration

In his comment, de Castro contends that LBNI's motion for reconsideration contains a rehash of LBNI's earlier arguments. He avers that despite the RTC's Stay Order, it is premature for this Court to suspend the proceedings. If a suspension of the proceedings is necessary, the proper venue to file the motion is with the Office of the Labor Arbiter.[24] De Castro further posits that LBNI should have informed this Court of the status of its Petition for Corporate Rehabilitation.[25]

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[19] *Supra* note 1, at 251.

[20] Motion for Reconsideration; *rollo*, p. 309.

[21] *Id.* at 311.

[22] *Id.* at 314.

[23] *Id.* at 221.

[24] Comment to the Motion for Reconsideration, *id.* at 341.

[25] *Ibid.*

THE COURT'S RULING

Except for the prayer to suspend the execution of our September 23, 2008 Decision, we do not find LBNI's Motion for Reconsideration meritorious. Although we reject, for lack of merit, LBNI's arguments regarding the legality of de Castro's dismissal, we suspend the execution of our Decision in deference to the Stay Order issued by the rehabilitation court.

The issue of illegal dismissal has already been resolved in the Court's September 23, 2008 Decision

LBNI's motion for reconsideration merely reiterates its earlier arguments, which we have already addressed in our September 23, 2008 Decision. LBNI has failed to offer any substantive argument that would convince us to reverse our earlier ruling.

LBNI argues that there is no logic for it to illegally dismiss de Castro *because being on probationary employment – a fact which this Court had stated in its decision – all that the company had to do was not to re-hire him.*[26] By this claim, LBNI has misread the import of our ruling. The September 23, 2008 Decision declared that de Castro "had not stayed long in the company and *had not even passed his probationary period* when the acts charged allegedly took place."[27] Properly read, we found that the acts charged against de Castro took place when he was still under probationary employment – a finding completely different from LBNI's claim that de Castro was dismissed during his probationary employment. On the contrary, de Castro was dismissed on the ninth month of his employment with LBNI, and by then, he was already a regular employee by operation of law. Article 281 of the Labor Code provides that "[p]robationary employment shall not exceed six (6) months from the date the employee started working, x x x [a]n employee who is allowed to work after a probationary period shall be considered a regular employee." As a regular employee, de Castro was entitled to

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[26] *Supra* note 20, at 309.

[27] *Supra* note 1, at 247.

security of tenure and his illegal dismissal from LBNI justified the awards of separation pay, backwages, and damages.

The pendency of the rehabilitation proceedings does not affect the Court's jurisdiction to resolve the case, but merely suspends the execution of the September 23, 2008 Decision

On October 18, 2005, while de Castro's petition was still pending before the Court, LBNI filed a motion to suspend the proceedings, citing the Stay Order, dated August 19, 2005, issued by the RTC of Makati, Branch 138 in S.P. Case No. M-6126.[28] The Stay Order read:

> FOR THE REASONS GIVEN and applying Section 6 of the Interim Rules of Procedure on Corporate Rehabilitation, x x x it is ordered that enforcement of **all claims against [LBNI] whether for money or otherwise and whether such enforcement is by Court action or otherwise, its guarantors and sureties not solidarily liable with the petitioner, be forthwith stayed.**
>
> xxx xxx xxx
>
> SO ORDERED.[29]

LBNI's motion was denied in our Resolution of December 12, 2005 for being premature, as de Castro then had yet to file his reply to LBNI's comment on the petition.[30] Thereafter, **nothing was heard from LBNI regarding the Stay Order or the rehabilitation proceedings it instituted** before the RTC of Makati, Branch 138. Even the memorandum, dated May 4, 2006, that LBNI filed with the Court contained no reference to the rehabilitation proceedings.[31]

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[28] *Rollo*, pp. 218-220.

[29] *Id.* at 221-222.

[30] *Id.* at 228.

[31] *Id.* at 252-268.

The filing of a memorandum before the Court is not an empty requirement, devoid of legal significance. In A.M. No. 99-2-04-SC, the Court declared that **issues raised in previous pleadings but not included in the memorandum shall be deemed waived or abandoned.** Being a summation of the parties' previous pleadings, the memoranda alone may be considered by the Court in deciding or resolving the petition. Thus, on account of LBNI's omission, only the issues raised in the parties' memoranda – principally, the validity of de Castro's dismissal from LBNI – were considered by the Court in resolving the case.

"The Court does not take judicial notice of proceedings in the various courts of justice in the Philippines."[32] At the time we decided the present case, we were thus not bound to take note of and consider the pendency of the rehabilitation proceedings, as the matter had not been properly brought to our attention. In *Social Justice Society v. Atienza*,[33] we said that:

> In resolving controversies, courts can only consider facts and issues pleaded by the parties. Courts, as well as magistrates presiding over them are not omniscient. They can only act on the facts and issues presented before them in appropriate pleadings. They may not even substitute their own personal knowledge for evidence. Nor may they take notice of matters except those expressly provided as subjects of mandatory judicial notice
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> xxx xxx xxx
>
> The party asking the court to take judicial notice is obligated to supply the court with the full text of the rules the party desires it to have notice of.

Notably, LBNI's memorandum was filed on May 4, 2006, more than 180 days from the date of the initial hearing on October 5, 2005 (as set in the Stay Order of August 19, 2005).

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[32] R. Francisco, *Evidence, Rules of Court in the Philippines, Rules 128-134* (1994 ed.), p. 24, citing *Mortera and Eceiza v. West of Scotland Insurance Office*, 36 Phil. 994 (1917).

[33] G.R. No. 156052, February 13, 2008, 545 SCRA 92, 114-120.

Under Section 11, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation (*Interim Rules*), a petition for rehabilitation shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of 180 days from the date of initial hearing. While the Interim Rules grant extension beyond the 180-day period, no such extension was alleged in this case; in fact, as we earlier pointed out, no mention at all was made in LBNI's memorandum of the rehabilitation proceedings. With the failure of LBNI to raise rehabilitation proceedings in its memorandum, the Court had sufficient grounds to suppose that the rehabilitation petition had been dismissed by the time the case was submitted for decision.

Given these circumstances, the existence of the Stay Order – which would generally authorize the suspension of judicial proceedings, even those pending before the Court – could not have affected the Court's action on the present case. At any rate, a stay order simply suspends all actions for claims against a corporation undergoing rehabilitation; it does not work to oust a court of its jurisdiction over a case properly filed before it.[34] Our ruling on the principal issue of the case – that de Castro had been illegally dismissed from his employment with LBNI – thus stands.

Nevertheless, with LBNI's manifestation that it is still undergoing rehabilitation, the Court resolves to suspend the execution of our September 23, 2008 Decision. The suspension shall last up to the termination of the rehabilitation proceedings, as provided in Section 11, in relation to Section 27, Rule 4 of the Interim Rules –

Sec. 11. *Period of the Stay Order.* - The stay order shall be effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings.

The petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing. The court may grant an extension

[34] *Negros Navigation Co., Inc. v. Court of Appeals*, G.R. No. 163156, December 10, 2008, 573 SCRA 434, 455.

beyond this period only if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated. In no instance, however, shall the period for approving or disapproving a rehabilitation plan exceed eighteen (18) months from the date of filing of the petition.

xxx xxx xxx

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.

WHEREFORE, we *DENY* the Motion for Reconsideration; accordingly, our Decision dated September 23, 2008 is hereby *AFFIRMED*. The National Labor Relations Commission is, however, directed to *SUSPEND* the execution of our September 23, 2008 Decision until the Stay Order is lifted or the corporate rehabilitation proceedings are terminated. Respondent Liberty Broadcasting Network, Inc. is hereby directed to submit quarterly reports to the National Labor Relations Commission on the status of its rehabilitation, subject to the penalty of contempt in case of noncompliance.

SO ORDERED.

Carpio Morales (Acting Chairperson), Velasco, Jr., Abad,[*] and *Perez,*[**] *JJ.,* concur.

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[*] Designated additional member *vice* Associate Justice Dante O. Tinga (ret.), pursuant to the Amended Rules under A.M. No. 99-8-09-SC.

[**] Designated additional member *vice* Associate Justice Leonardo A. Quisumbing (ret.), per Court *En Banc* Memorandum dated December 28, 2009, pursuant to the Amended Rules under A.M. No. 99-8-09-SC.

THIRD DIVISION

[G.R. No. 165442. August 25, 2010]

NASECO GUARDS ASSOCIATION-PEMA (NAGA-PEMA), *petitioner, vs.* **NATIONAL SERVICE CORPORATION (NASECO),** *respondent.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; NOT VIOLATED AS LONG AS THE OPPORTUNITY TO BE HEARD WAS MADE AVAILABLE TO A LITIGANT.—** In simple terms, the constitutional guarantee of due process requires that a litigant be given "a day in court." It is the availability of the opportunity to be heard that determines whether or not due process was violated. A litigant may or may not avail of the opportunity to be heard but as long as such was made available to him/her, there is no violation of the due process clause. In the case of *Lumiqued v. Exevea*, this Court declared that "[a]s long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process. Moreover, this constitutional mandate is deemed satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of."

2. **ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; REEVALUATION; DEFINED AND CONSTRUED.—** A reevaluation does not necessitate the introduction of new materials for review nor does it require a full hearing for new arguments. From a procedural standpoint, a reevaluation is a *continuation* of the original case and not a new proceeding. Hence, the evidence, financial reports and other documents submitted by the parties in the course of the original proceeding are to be visited and reviewed again. In this light, the respondent has been given the opportunity to be heard by the DOLE Secretary.

3. **COMMERCIAL LAW; CORPORATION CODE; DOCTRINE OF PIERCING THE CORPORATE VEIL; EXPLAINED.**

— In *Concept Builders, Inc. v. NLRC*, we explained the doctrine of piercing the corporate veil, as follows: It is a fundamental principle of corporation law that a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected. But, this separate and distinct personality of a corporation is merely a fiction created by law for convenience and to promote justice. So, when the notion of separate juridical personality is used to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws, this separate personality of the corporation may be disregarded or the veil of corporate fiction pierced. This is true likewise when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation. Also in *Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission*, this Court ruled: Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives. Applying the doctrine to the case at bar, we find no reason to pierce the corporate veil of respondent and go beyond its legal personality. Control, by itself, does not mean that the controlled corporation is a mere instrumentality or a business conduit of the mother company. Even control over the financial and operational concerns of a subsidiary company does not by itself call for disregarding its corporate fiction. There must be a perpetuation of fraud behind the control or at least a fraudulent or illegal purpose behind the control in order to justify piercing the veil of corporate fiction. Such fraudulent intent is lacking in this case.

APPEARANCES OF COUNSEL

Alfredo L. Bentulan for petitioner.
Sycip Salazar Hernandez & Gatmaitan for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* under Rule 45 assails the Decision[1] dated May 27, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 76667. The appellate court set aside the January 15, 2003[2] and March 11, 2003[3] Orders of the Department of Labor and Employment (DOLE) and ordered the latter to allow the parties to adduce evidence in support of their respective positions.

The facts follow.

Respondent National Service Corporation (NASECO) is a wholly-owned subsidiary of the Philippine National Bank (PNB) organized under the Corporation Code in 1975. It supplies security and manpower services to different clients such as the Securities and Exchange Commission, the Philippine Deposit Insurance Corporation, Food Terminal Incorporated, Forex Corporation and PNB. Petitioner NASECO Guards Association-PEMA (NAGA-PEMA) is the collective bargaining representative of the regular rank and file security guards of respondent. NASECO Employees Union-PEMA (NEMU-PEMA) is the collective bargaining representative of the regular rank and file (non-security) employees of respondent such as messengers, janitors, typists, clerks and radio-telephone operators.[4]

On December 2, 1993, respondent entered into a memorandum of agreement[5] with petitioner. The terms of the agreement covered the monetary claims of the petitioner such as salary adjustments, conversion of salary scheme under Republic Act

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[1] *Rollo*, pp. 27-39. Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Amelita G. Tolentino concurring.

[2] CA *rollo*, pp. 30-31.

[3] *Id.* at 176-179.

[4] Records, Vol. I, p. 459; records, Vol. II, p. 817.

[5] *Id.* at 130-134.

(R.A.) No. 6758[6] to R.A. No. 6727,[7] signing bonus, leaves and other benefits. A year after, petitioner demanded full negotiation for a collective bargaining agreement (CBA) with the respondent and submitted its proposals thereto.

On June 8, 1995, petitioner and respondent agreed to sign a CBA on non-economic terms.[8]

On September 24, 1996, petitioner filed a notice of strike because of respondent's refusal to bargain for economic benefits in the CBA. Following conciliation hearings, the parties again commenced CBA negotiations and started to resolve the issues on wage increase, productivity bonus, incentive bonus, allowances, and other benefits but failed to reach an agreement.

Meanwhile, respondent and NEMU-PEMA entered into a CBA on non-economic terms.[9] Unfortunately, a dispute among the leaders of NEMU-PEMA arose and at a certain point, leadership of the organization was unclear. Hence, the negotiations concerning the economic terms of the CBA were put on hold until the internal dispute could be resolved.

On April 29, 1997, petitioner filed a notice of strike before the National Conciliation and Mediation Board (NCMB) against respondent and PNB due to a bargaining deadlock. The following day, NEMU-PEMA likewise filed a notice of strike against respondent and PNB on the ground of unfair labor practices.[10]

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[6] AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES.

[7] AN ACT TO RATIONALIZE WAGE POLICY DETERMINATION BY ESTABLISHING THE MECHANISM AND PROPER STANDARDS THEREFOR, AMENDING FOR THE PURPOSE ARTICLE 99 OF, AND INCORPORATING ARTICLES 120, 121, 122, 123, 124, 126 AND 127 INTO, PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, FIXING NEW WAGE RATES, PROVIDING WAGE INCENTIVES FOR INDUSTRIAL DISPERSAL TO THE COUNTRYSIDE, AND FOR OTHER PURPOSES.

[8] Records, Vol. I, pp. 117-128; CA *rollo*, p. 183.

[9] *Id.* at 103-115; *id.* at 190.

[10] *Id.* at 5-6, 18.

Efforts by the NCMB to conciliate failed and pursuant to Article 263(g) of the Labor Code,[11] as amended, then DOLE Secretary Cresenciano B. Trajano assumed jurisdiction over the strike notices on June 25, 1998.[12]

On November 19, 1999, then DOLE Secretary Bienvenido E. Laguesma issued a Resolution[13] directing petitioner and respondent to execute a new CBA incorporating therein his dispositions regarding benefits of the employees as to wage increase, productivity bonus, vacation and sick leave, medical allowances and signing bonus. Respondent was further ordered to negotiate, for purposes of collective bargaining agreement, with NEMU-PEMA led by its president, Ligaya Valencia. The charge of unfair labor practice against respondent and PNB was dismissed.[14]

Respondent promptly filed a petition for *certiorari* before the CA questioning the DOLE Secretary's order and arguing that the ruling of the DOLE Secretary in favor of the unions and awarding them monetary benefits totaling five hundred thirty-one million four hundred forty-six thousand six hundred sixty-six and 67/100 (₱531,446,666.67) was inimical and deleterious to its financial standing and will result in closure and cessation of business for the company.

By Decision[15] dated March 19, 2001 (first CA Decision), the CA partly granted the petition and ruled that a recomputation and reevaluation of the benefits awarded was in order.

> WHEREFORE, the instant petition is partly GRANTED in that the case is remanded to the Secretary of Labor for purposes of recomputation and reevaluation of the CBA benefits.
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> SO ORDERED.[16]

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[11] Presidential Decree No. 442, as amended.

[12] Records, Vol. I, p. 17.

[13] CA *rollo*, pp. 180-194.

[14] *Id.* at 194.

[15] *Rollo*, pp. 58-63.

[16] *Id.* at 63.

In compliance with the CA directive, then DOLE Secretary Patricia A. Sto. Tomas conducted several clarificatory hearings. On January 15, 2003, Secretary Sto. Tomas issued an Order which provides:

> From the above, it is indubitable that the total cost to NASECO of our questioned award would amount to only ₱322,725,000, not ₱531,446,666.67 as claimed by the company. Thus, our November 19, 1999 Order is hereby affirmed *en toto*.
>
> WHEREFORE, judgment is hereby rendered:
>
> 1. [D]irecting NAGA-PEMA and NASECO to execute a new collective bargaining agreement effective November 1, 1993, incorporating therein the dispositions contained in our November 19, 1999 Order as well as all other items agreed upon by the parties.
> 2. Ordering NASECO to negotiate with NEMA-PEMA for a new collective bargaining agreement.
>
> The charges of unfair labor practice against NASECO and PNB are dismissed for lack of merit.
>
> SO ORDERED.[17]

Respondent filed a motion for reconsideration with the DOLE Secretary which was denied on March 11, 2003.

Respondent thus filed a petition for *certiorari* with the CA arguing that the DOLE Secretary, in issuing the January 15, 2003 Order deprived respondent of due process of law for there was no *reevaluation* that took place in the DOLE. It also argued that the order merely recomputed the DOLE Secretary's initial award of ₱531,446,666.67 and reduced it to ₱322,725,000.00, contrary to the ruling of the CA to recompute *and* reevaluate. Respondent claimed that what the DOLE Secretary should have done was to let the parties introduce evidence to show the proper computation of the monetary awards under the approved CBA.

In its second Decision dated May 27, 2004, the CA granted the petition, thus:

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[17] CA *rollo*, p. 31.

WHEREFORE, the orders dated 15 January 2003 and 11 March 2003 are hereby SET ASIDE and the case remanded to the public respondent to allow the parties to adduce evidence in support of their respective positions.

SO ORDERED.[18]

A motion for reconsideration was filed by herein petitioner but the same was denied by the CA on September 22, 2004[19] finding no reason to reverse and set aside its earlier decision.

Petitioner now comes to this Court for relief by way of a petition for review on *certiorari* seeking to set aside and reverse the May 27, 2004 Decision and the September 22, 2004 Resolution of the CA.

The main issue in this case is whether or not the respondent's right to due process was violated. A side issue raised by the petitioner is whether or not PNB, being the undisputed owner of and exercising control over respondent, should be made liable to pay the CBA benefits awarded to the petitioner.

Petitioner argues first that there was no violation of due process because respondent was never prohibited by the DOLE Secretary to submit supporting documents when the instant case was pending on remand. Petitioner contends that due process is properly observed when there is an opportunity to be heard, to present evidence and to file pleadings, which was never denied to respondent.

Second, petitioner argues that the CA erred in stating that respondent was a company operating at a loss and therefore cannot be expected to act generously and confer upon its employees additional benefits exceeding what is mandated by law. It is the petitioner's position that based on the "no loss, no profit" policy of respondent with PNB, respondent in truth has no "pocket" of its own and is, in effect, one (1) and the same with PNB with regard to financial gains and/or liabilities. Thus, petitioners contend that the CBA benefits should be

[18] *Rollo*, p. 39.

[19] *Id.* at 41.

shouldered by PNB considering the poor financial condition of respondent. To support such claim, petitioner submitted evidence[20] to show that PNB is in superb financial condition and is very much capable of shouldering the CBA award.[21]

Respondent on the other hand maintains that the DOLE Secretary violated its right to due process when she merely recomputed the CBA award instead of *reevaluating* the entire case and allowing it to present supporting documents in accordance with the first CA decision.[22] It claims that the order of the CA to reevaluate included and required a full assessment of the case together with reception of evidence such as financial statements, and the omission of such is a violation of its right to due process.

As to the petitioner's argument that respondent and PNB are essentially the same when it comes to financial condition, respondent contends that although a subsidiary, it has a separate and distinct personality from PNB with its own charter. Hence, the issue of PNB's financial well-being is immaterial in this case.

The petition is partly meritorious.

In simple terms, the constitutional guarantee of due process requires that a litigant be given "a day in court." It is the availability of the opportunity to be heard that determines whether or not due process was violated. A litigant may or may not avail of the opportunity to be heard but as long as such was made available to him/her, there is no violation of the due process clause. In the case of *Lumiqued v. Exevea*,[23] this Court declared that "[a]s long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been

[20] CA *rollo*, pp. 542-575.

[21] *Rollo*, pp. 14-16.

[22] *Id.* at 38.

[23] G.R. No. 117565, November 18, 1997, 282 SCRA 125, 146-147, citing *Legarda v. Court of Appeals*, G.R. No. 94457, October 16, 1997, 280 SCRA 642, 657 and *Pizza Hut/Progressive Dev't. Corp. v. NLRC*, 322 Phil. 579, 584 (1996).

denied due process of law, for this opportunity to be heard is the very essence of due process. Moreover, this constitutional mandate is deemed satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of."

The respondent's right to due process in this case has not been denied. The order in the first CA decision to recompute and reevaluate was satisfied when the DOLE Secretary reexamined their initial findings and adjusted the awarded benefits. A reevaluation, contrary to what the respondent claims, is a process by which a person or office (in this case the DOLE secretary) revisits its own initial pronouncement and makes another assessment of its findings. In simple terms, to reevaluate is *to take another look* at a previous matter in issue. A reevaluation does not necessitate the introduction of new materials for review nor does it require a full hearing for new arguments.

From a procedural standpoint, a reevaluation is a *continuation* of the original case and not a new proceeding. Hence, the evidence, financial reports and other documents submitted by the parties in the course of the original proceeding are to be visited and reviewed again. In this light, the respondent has been given the opportunity to be heard by the DOLE Secretary.

Also, contrary to the claim of the respondent that it was barred by the DOLE Secretary to introduce supporting documents during the recomputation and reevaluation, the records show that an Order by then Secretary of Labor Patricia A. Sto. Tomas dated July 11, 2002 specifically allowed both parties to submit their respective computations as regards the awarded benefits. To wit:

> WHEREFORE, the Bureau of Working Conditions is hereby directed to submit to this Office a detailed computation of the CBA benefits indicated in the resolution of November 19, 2001 within twenty (20) days from receipt of this Order. *The parties may submit their own computations to the Bureau for validation.*
>
> SO ORDERED.[24] (Italics supplied.)

[24] Records, Vol. I, p. 553.

It is thus inaccurate for the respondent to claim that it was denied due process because it had all the opportunity to introduce any supporting document in the course of the recomputation and reevaluation of the DOLE Secretary. Respondent admits that it did attach the financial statements and other documents in support of its alleged financial incapacity to pay the CBA awarded benefits, the same evidence it had earlier submitted before the CA (Memorandum in the first CA decision) in the motion for reconsideration of the DOLE Secretary's January 15, 2003 Order.[25] There is thus no showing that the DOLE Secretary denied respondent this basic constitutional right.

On the issue of liability, petitioner contends that PNB should be held liable to shoulder the CBA benefits awarded to them by virtue of it being a company having full financial, managerial and functional control over respondent as its subsidiary, and by reason of the unique "no loss, no profit" scheme implemented between respondent and PNB.

We are not persuaded.

Verily, what the petitioner is asking this Court to do is to pierce the veil of corporate fiction of respondent and hold PNB (being the mother company) liable for the CBA benefits.

In *Concept Builders, Inc. v. NLRC*,[26] we explained the doctrine of piercing the corporate veil, as follows:

> It is a fundamental principle of corporation law that a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected. But, this separate and distinct personality of a corporation is merely a fiction created by law for convenience and to promote justice. So, when the notion of separate juridical personality is used to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws, this separate personality of the corporation may be disregarded or the veil of corporate fiction pierced. This is true likewise when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation.

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[25] See CA *rollo*, pp. 37-38.

[26] G.R. No. 108734, May 29, 1996, 257 SCRA 149, 157-158.

Also in *Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission*,[27] this Court ruled:

> Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives.

Applying the doctrine to the case at bar, we find no reason to pierce the corporate veil of respondent and go beyond its legal personality. Control, by itself, does not mean that the controlled corporation is a mere instrumentality or a business conduit of the mother company. Even control over the financial and operational concerns of a subsidiary company does not by itself call for disregarding its corporate fiction. There must be a perpetuation of fraud behind the control or at least a fraudulent or illegal purpose behind the control in order to justify piercing the veil of corporate fiction. Such fraudulent intent is lacking in this case.

Petitioner argues that the appreciation, analysis and inquiry of this case may go beyond the presentation of respondent, and therefore must include the PNB, the bank being the undisputed whole owner of respondent and the sole provider of funds for the company's operations and for the payment of wages and benefits of the employees, under the "no loss, no profit" scheme.[28]

We disagree. There is no showing that such "no loss, no profit" scheme between respondent and PNB was implemented to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws, nor does the scheme show that respondent is a mere business conduit or alter ego of PNB. Absent proof of these circumstances, respondent's corporate personality cannot be pierced.

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[27] G.R. Nos. 170689 & 170705, March 17, 2009, 581 SCRA 598, 614.

[28] *Rollo,* p. 15.

It is apparent that petitioner wants the Court to disregard the corporate personality of respondent and directly go after PNB in order for it to collect the CBA benefits. On the same breath, however, petitioner argues that ultimately it is PNB, by virtue of the "no loss, no profit" scheme, which shoulders and provides the funds for financial liabilities of respondent including wages and benefits of employees. If such scheme was indeed true as the petitioner presents it, then there was absolutely no need to pierce the veil of corporate fiction of respondent. Moreover, the Court notes the pendency of a separate suit for absorption or regularization of NASECO employees filed by petitioner and NEMU-PEMA against PNB and respondent, docketed as NLRC NCR Case No. 06-03944-96, which is still on appeal with the National Labor Relations Commission (NLRC), as per manifestation by respondent. In the said case, petitioner submitted for resolution by the labor tribunal the issues of whether PNB is the employer of NASECO's work force and whether NASECO is a labor-only contractor.[29]

WHEREFORE, the petition is *PARTLY GRANTED*. The Decision dated May 27, 2004 and Resolution dated September 22, 2004 in CA-G.R. SP No. 76667 are hereby *REVERSED* and *SET ASIDE* as to the order to remand the case to the Secretary of Labor for introduction of supporting evidence. Accordingly, the Orders of the Secretary of Labor dated January 15, 2003 and March 11, 2003 are *REINSTATED and UPHELD*.

No costs.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Sereno, JJ.,* concur.

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[29] *Id.* at 290-370, 412-413.

THIRD DIVISION

[G.R. No. 165641. August 25, 2010]

ENGR. RANULFO C. FELICIANO, in his capacity as General Manager of the Leyte Metropolitan Water District (LMWD), Tacloban City, *petitioner,* **NAPOLEON G. ARANEZ, in his capacity as President and Chairman of "No Tax, No Impairment of Contracts Coalition, Inc.,"** *petitioner-in-intervention, vs.* **HON. CORNELIO C. GISON, Undersecretary, Department of Finance,** *respondent.*

SYLLABUS

1. POLITICAL LAW; PUBLIC CORPORATIONS; GOVERNMENT-OWNED OR CONTROLLED CORPORATION DISTINGUISHED FROM PRIVATE CORPORATION; CASE AT BAR.— Our ruling in *Feliciano* squarely addressed the difference between a private corporation created under general law and a GOCC created by a special charter, and we need only to quote what *Feliciano* said: We begin by explaining the general framework under the fundamental law. The Constitution recognizes two classes of corporations. The first refers to private corporations created under a general law. The second refers to government-owned or controlled corporations created by special charters. Section 16, Article XII of the Constitution provides: Sec. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability. The Constitution emphatically prohibits the creation of private corporations except by a general law applicable to all citizens. The purpose of this constitutional provision is to ban private corporations created by special charters, which historically gave certain individuals, families or groups special privileges denied to other citizens. In short, Congress cannot enact a law creating a private corporation with a special charter. Such legislation would be unconstitutional. Private corporations may exist only under a

general law. If the corporation is private, it must necessarily exist under a general law. Stated differently, only corporations created under a general law can qualify as private corporations. Under existing laws, that general law is the Corporation Code, except that the Cooperative Code governs the incorporation of cooperatives. The Constitution authorizes Congress to create government-owned or controlled corporations through special charters. Since private corporations cannot have special charters, it follows that Congress can create corporations with special charters only if such corporations are government-owned or controlled. Obviously, LWDs [*referring to local water districts*] are not private corporations because they are not created under the Corporation Code. LWDs are not registered with the Securities and Exchange Commission. Section 14 of the Corporation Code states that "[A]ll corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation x x x." LWDs have no articles of incorporation, no incorporators and no stockholders or members. There are no stockholders or members to elect the board directors of LWDs as in the case of all corporations registered with the Securities and Exchange Commission. The local mayor or the provincial governor appoints the directors of LWDs for a fixed term of office. x x x *Feliciano* further categorically held that P.D. No. 198 constitutes the special charter by virtue of which local water districts exist. Unlike private corporations that derive their legal existence and power from the Corporation Code, water districts derive their legal existence and power from P.D. No. 198. Section 6 of the decree in fact provides that water districts "shall exercise the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in, and subject to such restrictions imposed under this Act." Therefore, water districts would not have corporate powers without P.D. No. 198. As already mentioned above, the Court reiterated this ruling – *i.e.* that a water district is a government-owned and controlled corporation with a special charter since it is created pursuant to a special law, PD 198 – albeit with respect to the authority of the COA to audit water districts, in *De Jesus v. COA*.

2. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF CONCLUSIVENESS OF JUDGMENT; EXPLAINED.— The principle of doctrine of "conclusiveness of judgment" – a branch of the rule on *res judicata* – provides

> that issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action. Where there has been a previous final judgment on the merits between the same parties or substantially the same parties, rendered by a court of competent jurisdiction over the matter and the parties, the matters or issues raised and adjudged in the previous final judgment shall be conclusive on the parties although they are now litigating a different cause of action and shall continue to be binding between the same parties for as long as the facts on which that judgment was predicated continue to be the facts of the case or incident before the court.

APPEARANCES OF COUNSEL

Torralba Ereneta Elamparo and Ortega for petitioner.
Grapilon Can Obias & Hidalgo Law Office for intervenor.

D E C I S I O N

BRION, *J.*:

Before this Court is the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Leyte Metropolitan Water District (*LMWD*) through its General Manager, Engr. Ranulfo C. Feliciano, which seeks to set aside the July 14, 2004 decision of the Court of Appeals (*CA*)[2] that in turn affirmed the ruling of the Court of Tax Appeals (*CTA*) in CTA Case No. 6165.[3] The CTA dismissed LMWD's petition for lack of jurisdiction to try the case.

Joining the petitioner is the "No Tax, No Impairment of Contracts Coalition, Inc." (*Coalition*), a corporation represented by its President and Chairman, Napoleon G. Aranez, which filed a motion for leave to admit complaint-petition in intervention

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[1] *Rollo,* pp 8-33.

[2] *Id.* at 34-40.

[3] *Id.* at 45-55.

on February 17, 2005.[4] The Court granted said motion and required the Coalition, together with LMWD, to submit their respective memoranda in a resolution dated July 5, 2006.[5]

BACKGROUND FACTS

The present petition arose from the tax case initiated by LMWD after it filed with the Department of Finance (*DOF*) a petition requesting that certain water supply equipment and a motor vehicle, particularly a Toyota Hi-Lux pick-up truck, be exempted from tax. These properties were given to LMWD through a grant by the Japanese Government for the rehabilitation of its typhoon-damaged water supply system.

In an indorsement dated July 5, 1995, the DOF granted the tax exemption on the water supply equipment but assessed the corresponding tax and duty on the Toyota Hi-Lux pick-up truck.[6] On June 9, 2000, LMWD moved to reconsider the disallowance of the tax exemption on the subject vehicle. The DOF, through then Undersecretary Cornelio C. Gison, denied LMWD's request for reconsideration because the tax exemption privileges of government agencies and government owned and controlled corporations (*GOCCs*) had already been withdrawn by Executive Order No. 93.[7] This prompted LMWD, through its General Manager Engr. Ranulfo C. Feliciano, to appeal to the CTA.

After considering the evidence presented at the hearing, the CTA found LMWD to be a GOCC with an original charter. For this reason, the CTA resolved to dismiss LMWD's appeal for lack of jurisdiction to take cognizance of the case.[8] The CTA's resolution was without prejudice to the right of LMWD to refile the case, if it so desires, in the appropriate forum. Likewise,

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[4] *Id.* at 87-101.

[5] *Id.* at 187.

[6] *Id.* at 35.

[7] *Id.* at 42.

[8] In a Resolution dated February 8, 2002; *Id,* pp. 56-60.

the CTA denied LMWD's motion to reconsider the dismissal of its appeal.[9]

LMWD filed a petition for review[10] with the CA raising the issues of whether the CTA decided the case in accord with the evidence presented and the applicable law, and **whether the LMWD is a GOCC with original charter.** The CA found the petition to be unmeritorious and affirmed the CTA's ruling that the LMWD is a GOCC with original charter, and not a private corporation or entity as LMWD argued. Hence, the present petition for review on *certiorari* filed by LMWD with this Court.

THE PETITION

LMWD appeals to us primarily to determine whether water districts are, by law, GOCCs with original charter. Citing the Constitution and Presidential Decree (*P.D.*) No. 198,[11] LMWD claims that water districts are private corporations and as such are entitled to certain tax exemptions under the law. LMWD argues that **P.D. No. 198 is a general law, similar to the Corporation Code and other general laws, and is not a special law.** Because it is a general law, water districts constituted under its terms are private corporations, not a government-owned or controlled corporation (*GOCC*) with original charter.

In support of its position, LMWD points out provisions in P.D. No. 198 that it claims implements the general policy of the decree as enunciated in its Section 2, specifically, Section 5[12] (pertaining to the purpose of water districts), Section 6 (formation

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[9] *Id.* at 61-63.

[10] *Id.* at 64-84.

[11] Declaring A National Policy Favoring Local Operation and Control of Water Systems; Authorizing the Formation of Local Water Districts and Providing for the Government and Administration of such Districts; Chartering a National Administration to Facilitate Improvement of Local Water Utilities; Granting said Administration such Powers as are Necessary to Optimize Public Service from Water Utility Operations, and for other Purposes. Also known as the "Provincial Water Utilities Act of 1973." Effective May 25, 1973.

[12] Section 5, *Purpose*. Local water districts **may be formed pursuant to this Title** for the purposes of (a) acquiring, installing, improving, maintaining

of a water district), as amended by P.D. No. 1479,[13] and Section 7 (filing of resolution forming a water district), as amended by P.D. No. 768,[14] of Chapter II. LMWD concludes from this examination that P.D. No. 198 is not an original charter but a general act authorizing the formation of water districts on a local option basis, similar to the Corporation Code (Batas Pambansa Blg. 68).

In drawing parallelism with the Corporation Code, LMWD cites (1) the *Resolution of Formation* passed by the *sanggunian* under PD 198 for the creation of a water district as an equivalent to the *Articles of Incorporation and By-laws* under the Corporation Code, and (2) the *filing of the Resolution of Formation* of the water district with the LWUA as the counterpart of the *issuance of the Certificate of Filing of the Articles of Incorporation and By-laws* to the private corporation by the

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and operating water supply and distribution systems for domestic, industrial, municipal and agricultural uses for residents and lands within the boundaries of such districts, (b) providing, maintaining and operating waste water collection, treatment and disposal facilities, and (c) conducting such other functions and operations incidental to water resource development, utilization and disposal within such districts, as are necessary or incidental to said purpose. (Emphasis supplied by the petitioner.)

[13] Section 6. *Formation of District*. This Act is the **source of authorization and power to form and maintain a district**. For purposes of this Act, **a district shall be considered as a quasi-public corporation** performing public service and supplying public wants. As such, a district shall **exercise the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in, and subject to such restrictions imposed, under this Act.** x x x (Emphasis supplied by the petitioner.)

[14] Section 7. *Filing of Resolution.* A **certified copy of the resolution or resolutions forming a district shall be forwarded to the office of the Secretary of the Administration. If found by the Administration to conform to the requirements of Section 6 and the policy objectives in Section 2, the resolution shall be duly filed.** The district shall be deemed **duly formed and existing upon the date of such filing.** A certified copy of said resolution showing the filing stamp of the Administration shall be maintained in the office of the district. **Upon such filing, the local government or governments concerned shall lose ownership, supervision and control or any right whatsoever over the district except as provided herein.** (Emphasis supplied by the petitioner.)

Securities and Exchange Commission (*SEC*). The juridical personality of a water district is acquired on the date of filing of the resolution in the same way that the juridical personality of a private corporation is acquired on the date of issuance of the certificate of filing with the SEC.

LMWD further claims that the Constitution does not limit the meaning of the term "general law" to the Corporation Code, as there are other general laws such as Republic Act (*R.A.*) No. 6938[15] (including R.A. No. 6939 — An Act Creating the Cooperative Development Authority), and R.A. No. 6810.[16] Under R.A. No. 6938 and R.A. No. 6810, any group of individuals can form a cooperative and a Countryside and *Barangay* Business Enterprise (*CBBE*), respectively, and acquire a juridical personality separate and distinct from their creators, members or officers provided that they comply with all the requirements under said laws. In the same manner, any group of individuals in a given local government unit can form and organize themselves into a water district provided that they comply with the requirements under P.D. No. 198.

Part of LMWD's theory is that P.D. No. 198 is not the operative act that created the local water districts; they are created through compliance with the nine separate and distinct operative acts found in the Procedural Formation of a Water District prescribed under Section 6 of P.D. No. 198 and its Implementing Rules and Regulations. The last step of these operative acts is the filing of the Resolution of Formation of the *sanggunian* concerned with the LWUA after the latter has determined that such resolution has conformed to the requirements of Section 6 and the policy objectives in Section 2 of P.D. No. 198,

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[15] An Act to Ordain A Cooperative Code of the Philippines. Also known as the "Cooperative Code of the Philippines." Enacted into law on March 10, 1990.

[16] An Act Establishing the Magna Carta for Countryside and Barangay Business Enterprises, Granting Exemptions from any and all Government Rules and Regulations and other Incentives and Benefits therefore, and for other Purposes. Also known and cited as the "Magna Carta for Countryside and Barangay Business Enterprises" or "*Kalakalan* 20 Law." Approved December 14, 1989.

as amended.[17] According to LMWD, no water district is formed by the enactment of P.D. No. 198. The decree merely authorized the formation of water districts by the *sanggunian*, in the same manner that the Corporation Code authorizes the formation of private corporations.

LMWD theorizes that what is actually chartered, formed and created under P.D. No. 198 is the Local Water Utilities Administration (*LWUA*), as provided in Section 49 of the decree. This provision establishing LWUA's charter and the policy statement in Section 2 of P.D. No. 198, are in stark contrast to the decree's failure to provide an express provision on what constitutes the water districts' charter, leading to the inference that the decree is not the charter of the water districts but merely authorizes their formation, on a local option basis.

THE PETITION-IN-INTERVENTION

On February 17, 2005, Napoleon G. Aranez (*Aranez*), acting in behalf of the "No Tax, No Impairment of Contracts Coalition, Inc." (*Coalition*) filed a motion for leave to admit complaint-petition in intervention in connection with the petition for review on *certiorari* filed by LMWD with this Court. Aranez is the Coalition's president and chairman. The Coalition claims to indirectly represent all the water district concessionaires of the entire country figuring to more or less four hundred million, aside from the 26,000 concessionaires situated in the city of Tacloban and the municipalities of Dagami, Palo, Pastrana, Sta. Fe, Tabon-Tabon, Tanauan, Tolosa — all within the province of Leyte.

The petition in intervention raises three main arguments: (1) that the water districts are not GOCCs as they are quasi-public corporations or private corporations exercising public functions, (2) that classifying the water districts as GOCCs will result in an unjust disregard of the "non-impairment of contracts" clause in the Constitution, and (3) that the appealed CA decision, if not corrected or reversed, would result in a nationwide crisis and would create social unrest.

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[17] As provided in Section 7 of P.D. No, 198, as amended by P.D. No. 768 (Effective August 15, 1975).

Interestingly, the Coalition sets forth the premise that P.D. No. 198 is not entirely a special law or a general law, but a composite law made up of both laws: Title II – Local Water District Law being the general law, and Title III – Local Water Utilities Law being the special law or charter. For the rest of the petition in intervention, the Coalition adopts supporting arguments similar, if not exactly the same, as those of LMWD's.

THE COURT'S RULING

We find no merit in the petition and the petition in intervention, particularly in their core position that water districts are private corporations, not GOCCs. The question is a long-settled matter that LMWD and the Coalition seek to revive and to re-litigate in their respective petitions.

The present petition is not the first instance that the petitioner LMWD, through Engr. Ranulfo C. Feliciano, has raised for determination by this Court the corporate classification of local water districts.[18] LMWD posed this exact same question in *Feliciano v. Commission on Audit* (*COA*).[19] In ruling that local water districts, such as the LMWD, are GOCCs with special charter, the Court even pointed to settled jurisprudence[20] culminating in *Davao City Water District v. Civil Service Commission*[21] and recently reiterated in *De Jesus v. COA.* [22]

In *Feliciano,* LMWD likewise claimed that it is a private corporation and therefore, should not be subject to the audit jurisdiction of the COA. LMWD then argued that P.D. No. 198 is

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[18] In *National Service Corporation v. NLRC* (G.R. No. 69870, November 29, 1988, 168 SCRA 122), the Court, by citing the deliberations in the Constitutional Commission, clarified that there is no difference between the terms "original charters" and "special charters."

[19] G.R. No. 147402, January 14, 2004, 419 SCRA 363.

[20] *Baguio Water District v. Hon. Trajano*, 212 Phil. 674;127 SCRA 730 (1984); *Hagonoy Water District v. NLRC*, G.R. No. 81490, August 31, 1988, 165 SCRA 272; *Tanjay Water District v. Gabaton*, G.R. No. 84300, April 17, 1989, 172 SCRA 253.

[21] G.R. Nos. 95237-38, September 13, 1991, 201 SCRA 593.

[22] G.R. No. 149154, June 10, 2003. 403 SCRA 666.

not an "original charter" that would place the water districts within the audit jurisdiction of the COA as defined in Section 2 (1), Article IX-D of the 1987 Constitution.[23] Neither did P.D. No. 198 expressly direct the creation of the water districts. LMWD posited that the decree merely provided for their formation on an optional or voluntary basis and what actually created the water districts is the approval of the *Sanggunian* Resolution.[24] Significantly, these are the very same positions that the LMWD and the Coalition (as petitioner-intervenor) submit in the present petition.

Our ruling in *Feliciano* squarely addressed the difference between a private corporation created under general law and a GOCC created by a special charter, and we need only to quote what *Feliciano* said:

> We begin by explaining the general framework under the fundamental law. The Constitution recognizes two classes of corporations. The first refers to private corporations created under a general law. The second refers to government-owned or controlled corporations created by special charters. Section 16, Article XII of the Constitution provides:
>
> > Sec. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.
>
> The Constitution emphatically prohibits the creation of private corporations except by a general law applicable to all citizens. The purpose of this constitutional provision is to ban private corporations created by special charters, which historically gave certain individuals, families or groups special privileges denied to other citizens.

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[23] SECTION 2. (1) The Commission on Audit shall have the power, authority and duty to examine, audit and settle all accounts pertaining to the Government, or any of its subdivisions, agencies or instrumentalities, including **government-owned and controlled corporations with original charters**, and on a post audit basis: x x x (Emphasis supplied).

[24] *Supra* 2, pp. 368-369.

In short, Congress cannot enact a law creating a private corporation with a special charter. Such legislation would be unconstitutional. Private corporations may exist only under a general law. If the corporation is private, it must necessarily exist under a general law. Stated differently, only corporations created under a general law can qualify as private corporations. Under existing laws, that general law is the Corporation Code, except that the Cooperative Code governs the incorporation of cooperatives.

The Constitution authorizes Congress to create government-owned or controlled corporations through special charters. Since private corporations cannot have special charters, it follows that Congress can create corporations with special charters only if such corporations are government-owned or controlled.

Obviously, LWDs [*referring to local water districts*] are not private corporations because they are not created under the Corporation Code. LWDs are not registered with the Securities and Exchange Commission. Section 14 of the Corporation Code states that "[A]ll corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation x x x." LWDs have no articles of incorporation, no incorporators and no stockholders or members. There are no stockholders or members to elect the board directors of LWDs as in the case of all corporations registered with the Securities and Exchange Commission. The local mayor or the provincial governor appoints the directors of LWDs for a fixed term of office. This Court has ruled that LWDs are not created under the Corporation Code, thus:

> From the foregoing pronouncement, it is clear that what has been excluded from the coverage of the CSC are those corporations created pursuant to the Corporation Code. **Significantly, petitioners are not created under the said code, but on the contrary, they were created pursuant to a special law and are governed primarily by its provision.** (Emphasis supplied)" (*Citations Omitted*)[25]

Feliciano further categorically held that P.D. No. 198 constitutes the special charter by virtue of which local water districts exist. Unlike private corporations that derive their legal existence and power from the Corporation Code, water districts

[25] *Id.* at 369-370.

derive their legal existence and power from P.D. No. 198. Section 6 of the decree in fact provides that water districts "shall exercise the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in, and subject to such restrictions imposed under this Act." Therefore, water districts would not have corporate powers without P.D. No. 198.

As already mentioned above, the Court reiterated this ruling – *i.e.* that a water district is a government-owned and controlled corporation with a special charter since it is created pursuant to a special law, PD 198 – albeit with respect to the authority of the COA to audit water districts, in *De Jesus v. COA*.[26]

In light of these settled rulings, specifically rendered conclusive on LMWD by *Feliciano v. COA* and the application of the principle of "conclusiveness of judgment," we cannot but deny the present petition and petition in intervention.

The principle of doctrine of "conclusiveness of judgment" – a branch of the rule on *res judicata*[27] – provides that issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action. Where there has been a previous final judgment on the merits between the same parties or substantially the same parties, rendered by a court of competent jurisdiction over the matter and the parties, the matters or issues raised and adjudged in the previous final judgment shall be conclusive on the parties although they are now litigating a different cause of action[28] and shall continue to be binding between the same parties for as long as the facts on which that judgment was predicated continue to be the facts of the case or incident before the court.[29]

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[26] *Supra* at 22.

[27] See *Quasha v. Court of Appeals*, G.R. No. 182013, December 4, 2009; *Oropeza Marketing Corporation vs. Allied Banking Corporation* G.R. No. 129788, December 3, 2002, 393 SCRA 278.

[28] *Tan v. Court of Appeals*, 415 Phil. 675; *Vda. de Cruzo v. Carriaga, Jr.* 174 SCRA 330 (1989).

[29] *Kilosbayan, Inc. v. Morato*, 246 SCRA 145 (1996); *Miranda v. Court of Appeals*, 141 SCRA 302, February 11, 1986.

No doubt exists that the judgment in *Feliciano v. COA* was a final judgment rendered by a court with competent jurisdiction over the subject matter and the parties. The decision was in fact a ruling of this Court on the same issue posed in the present case. The ruling was also on the merits as it squarely responded to the issues the parties raised on the basis of their submitted arguments. There was, likewise, between *Feliciano v. COA* and the present case a substantial identity of parties and issue presented.

In both cases, the main petitioner has been LMWD, represented by its General Manager Engr. Ranulfo C. Feliciano. While the respondents in these cases were different government offices – the Commission on Audit and the Department of Finance – they nevertheless represented and spoke for the same government; thus, a substantial identity of respondents obtained in resolving the same contentious issue of whether local water districts should be treated as private corporations and not as GOCCs with special charter.

IN VIEW OF THE FOREGOING, we hereby *DENY* the petition and the petition for intervention for lack of merit and accordingly *AFFIRM* the decision of the Court of Appeals dated July 14, 2004 affirming the ruling of the Court of Tax Appeals in CTA Case No. 6165. Costs against the petitioners.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Villarama, Jr., and *Sereno, JJ.*, concur.

FIRST DIVISION

[G.R. No. 168387. August 25, 2010]

SALUN-AT MARQUEZ and NESTOR DELA CRUZ, *petitioners, vs.* **ELOISA ESPEJO, ELENITA ESPEJO, EMERITA ESPEJO, OPHIRRO ESPEJO, OTHNIEL ESPEJO, ORLANDO ESPEJO, OSMUNDO ESPEJO, ODELEJO ESPEJO and NEMI FERNANDEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ONLY QUESTION OF LAW SHOULD BE RAISED; EXCEPTIONS.— The rule that a petition for review should raise only questions of law admits of exceptions, among which are "(1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a *misappreciation of facts*; (5) when the findings of fact are *conflicting*; (6) when, in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings 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; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record."

2. ID.; ID.; DISMISSAL OF APPEAL; A PARTY CANNOT BE DEPRIVED OF HIS RIGHT TO APPEAL AN ADVERSE DECISION JUST BECAUSE ANOTHER PARTY HAD ALREADY APPEALED AHEAD OF HIM; RATIONALE.— It is the appellant's responsibility to point out the perceived errors in the appealed decision. When a party merely raises equitable considerations such as the "clean hands" doctrine without a clear-cut legal basis and cogent arguments to support his claim, there should be no surprise if the Court is not swayed

to exercise its appellate jurisdiction and the appeal is dismissed outright. The dismissal of an appeal does not always and necessarily mean that the appealed decision is correct, for it could simply be the result of the appellant's inadequate discussion, ineffectual arguments, or even procedural lapses. RBBI's failure to convince the Court of the merits of its appeal should not prejudice petitioners who were not parties to RBBI's appeal, especially because petitioners duly filed a separate appeal and were able to articulately and effectively present their arguments. A party cannot be deprived of his right to appeal an adverse decision just because another party had already appealed ahead of him, or just because the other party's separate appeal had already been dismissed.

3. ID.; ID.; JUDGMENTS; *RES JUDICATA*; CONCLUSIVE ONLY BETWEEN THE PARTIES AND THEIR SUCCESSORS-IN-INTEREST BY TITLE SUBSEQUENT TO THE COMMENCEMENT OF THE ACTION; APPLICATION IN CASE AT BAR.— There is another reason not to bind the petitioners to the final judgment against RBBI. RBBI executed the transfer (VLTs) in favor of petitioners *prior* to the commencement of the action. Thus, when the action for cancellation of CLOA was filed, RBBI had already divested itself of its title to the two properties involved. Under the rule on *res judicata*, a judgment (*in personam*) is conclusive only between the parties and their successors-in-interest by title *subsequent* to the commencement of the action. Thus, when the vendor (in this case RBBI) has already transferred his title to third persons (petitioners), the said transferees are not bound by any judgment which may be rendered against the vendor.

4. ID.; EVIDENCE; BEST EVIDENCE RULE; DEFINED.— The Best Evidence Rule states that when the subject of inquiry is the *contents* of a document, the best evidence is the *original document* itself and no other evidence (such as a reproduction, photocopy or oral evidence) is admissible as a general rule. The original is preferred because it reduces the chance of undetected tampering with the document.

5. ID.; ID.; PAROL EVIDENCE RULE; EXPLAINED; NOT PRESENT IN CASE AT BAR.— The Parol Evidence Rule excludes parol or extrinsic evidence by which a party seeks to

contradict, vary, add to or subtract from the terms of a valid agreement or instrument. Thus, it appears that what the CA actually applied in its assailed Decision when it refused to look beyond the words of the contracts was the Parol Evidence Rule, not the Best Evidence Rule. The appellate court gave primacy to the literal terms of the two contracts and refused to admit any other evidence that would contradict such terms. However, even the application of the Parol Evidence Rule is improper in the case at bar. In the first place, respondents are *not* parties to the VLTs executed between RBBI and petitioners; they are strangers to the written contracts. Rule 130, Section 9 specifically provides that parol evidence rule is exclusive only as "between the parties and their successors-in-interest." The parol evidence rule may not be invoked where at least one of the parties to the suit is not a party or a privy of a party to the written document in question, and does not base his claim on the instrument or assert a right originating in the instrument. Moreover, the instant case falls under the exceptions to the Parol Evidence Rule, as provided in the second paragraph of Rule 130, Section 9: However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading: (1) An *intrinsic ambiguity, mistake or imperfection in the written agreement*; (2) The *failure of the written agreement to express the true intent and agreement of the parties thereto*; x x x

6. CIVIL LAW; CONTRACTS; INTERPRETATION OF; IN CASE OF DOUBT, IT IS THE INTENTION OF THE CONTRACTING PARTIES THAT WILL PREVAIL; CONSTRUED. — Well-settled is the rule that in case of doubt, it is the intention of the contracting parties that prevails, for the intention is the soul of a contract, not its wording which is prone to mistakes, inadequacies, or ambiguities. To hold otherwise would give life, validity, and precedence to mere typographical errors and defeat the very purpose of agreements. In this regard, guidance is provided by the following articles of the Civil Code involving the interpretation of contracts: Article 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former. Article 1371. In order to judge

the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. Rule 130, Section 13 which provides for the rules on the interpretation of documents is likewise enlightening: Section 13. *Interpretation according to circumstances.* – For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown, so that the judge may be placed in the position of those whose language he is to interpret. Applying the foregoing guiding rules, it is clear that the Deed of Sale was intended to transfer the Lantap property to the respondents, while the VLTs were intended to convey the Murong property to the petitioners. This may be seen from the *contemporaneous and subsequent acts* of the parties.

7. ID.; ID.; REFORMATION OF CONTRACT; WHEN PROPER; NOT APPLICABLE IN CASE AT BAR.— A cause of action for the reformation of a contract only arises when one of the contracting parties manifests an intention, by overt acts, not to abide by the true agreement of the parties. It seems fairly obvious that petitioners had no cause to reform their VLTs because the parties thereto (RBBI and petitioners) never had any dispute as to the interpretation and application thereof. They both understood the VLTs to cover the Murong property (and not the Lantap property). It was only much later, when strangers to the contracts argued for a different interpretation, that the issue became relevant for the first time. All told, we rule that the Deed of Sale dated February 26, 1985 between respondents and RBBI covers the *Lantap property* under TCT No. T-62836, while the Deeds of Voluntary Land Transfer and TCT Nos. CLOA-395 and CLOA-396 of the petitioners cover the *Murong property* under TCT No. T-62096. In consequence, the CA's ruling against RBBI should not be executed as such execution would be inconsistent with our ruling herein. Although the CA's decision had already become final and executory *as against RBBI* with the dismissal of RBBI's petition in G.R. No. 163320, our ruling herein in favor of petitioners is a supervening cause which renders the execution of the CA decision against RBBI unjust and inequitable.

APPEARANCES OF COUNSEL

Dominica Dumangeng-Rosario and *Arys Poynter Deloso* for petitioners.

Basilio P. Rupisan for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

When the parties admit the contents of written documents but put in issue whether these documents adequately and correctly express the true intention of the parties, the deciding body is authorized to look beyond these instruments and into the contemporaneous and subsequent actions of the parties in order to determine such intent.

Well-settled is the rule that in case of doubt, it is the intention of the contracting parties that prevails, for the intention is the soul of a contract, not its wording which is prone to mistakes, inadequacies, or ambiguities. To hold otherwise would give life, validity, and precedence to mere typographical errors and defeat the very purpose of agreements.

This Petition for Review on *Certiorari*[1] assails the October 7, 2003 Decision,[2] as well as the May 11, 2005 Resolution[3] of the Court of Appeals (CA) in CA G.R. SP No. 69981. The dispositive portion of the appellate court's Decision reads:

WHEREFORE, finding reversible error committed by the Department of Agrarian Reform Adjudication Board, the instant petition for review is GRANTED. The assailed Decision, dated 17 January 2001, rendered by the Department of Agrarian Reform Adjudication Board is hereby ANNULLED and SET ASIDE. The Decision of the Department of Agrarian Reform Adjudication Board

[1] *Rollo* of G.R. No. 168387, pp. 10-26.

[2] *Id.* at 27-35; penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Portia Alino-Hormachuelos and Rosalinda Asuncion-Vicente.

[3] *Id.* at 36-37.

of Bayombong[,] Nueva Vizcaya, dated 17 March 1998, is REINSTATED. Costs against respondents.

SO ORDERED.[4]

The reinstated Decision of the Department of Agrarian Reform Adjudication Board (DARAB) of Bayombong, Nueva Vizcaya, in turn, contained the following dispositive portion:

Accordingly, judgment is rendered:

1. Finding [respondents] to be the owner by re-purchase from RBBI [of] the Murong property covered by TCT No. [T-]62096 (formerly TCT No. 43258);

2. Ordering the cancellation of TCT with CLOA Nos. 395 and 396 in the name[s] of Salun-at Marquez and Nestor de la Cruz respectively, as they are disqualified to become tenants of the Lantap property;

3. Directing RBBI to sell through VOS the Lantap property to its rightful beneficiary, herein tenant-farmer Nemi Fernandez under reasonable terms and conditions;

4. Ordering RBBI to return the amount paid to it by Nestor and Salun-at; and ordering the latter to pay 20 cavans of *palay* per hectare at 46 kilos per cavan unto [respondents] plus such accrued and unpaid rentals for the past years as may be duly accounted for with the assistance of the Municipal Agrarian Reform Officer of Bagabag, Nueva Vizcaya who is also hereby instructed to assist the parties execute their leasehold contracts and;

5. The order to supervise harvest dated March 11, 1998 shall be observed until otherwise modified or dissolved by the appellate body.

SO ORDERED.[5]

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[4] *Id.* at 34.

[5] Regional Agrarian Reform Adjudicator's (RARAD's) Decision dated March 17, 1998, pp. 4-5; DARAB records, pp. 101-102.

Factual Antecedents

Respondents Espejos were the original registered owners of two parcels of agricultural land, with an area of two hectares each. One is located at *Barangay* Lantap, Bagabag, Nueva Vizcaya (the *Lantap property*) while the other is located in *Barangay* Murong, Bagabag, Nueva Vizcaya (the *Murong property*). There is no dispute among the parties that the Lantap property is tenanted by respondent Nemi Fernandez (Nemi)[6] who is the husband[7] of respondent Elenita Espejo (Elenita), while the Murong property is tenanted by petitioners Salun-at Marquez (Marquez) and Nestor Dela Cruz (Dela Cruz).[8]

The respondents mortgaged both parcels of land to Rural Bank of Bayombong, Inc. (RBBI) to secure certain loans. Upon their failure to pay the loans, the mortgaged properties were foreclosed and sold to RBBI. RBBI eventually consolidated title to the properties and transfer certificates of title (TCTs) were issued in the name of RBBI. TCT No. T-62096 dated January 14, 1985 was issued for the Murong property. It contained the following description:

> Beginning at a point marked I on plan H-176292, S. 44034 W. 1656.31 m. more or less from B.L.L.M. No 1, Bagabag Townsite, K-27,
>
> thence N. 28 deg. 20 'E., 200.00 m. to point 2;
> thence S. 61 deg. 40 'E., 100.00 m. to point 3;
> thence S. 28 deg. 20 'W., 200.00 m. to point 4;
> thence N. 61 deg. 40 'W., 100.00 m. to point 1; point of beginning;
>
> Containing an area of 2.000 hectares. Bounded on the northeast, by Road; on the southeast, and southwest by public land; and on the northwest by Public Land, properties claimed by Hilario Gaudia and Santos Navarrete. Bearings true. Declination 0131 'E. Points referred to are marked on plan H-176292. Surveyed under authority of Sections 12-22 Act No. 2874 and in accordance with existing

[6] CA Decision, pp. 5-6; *rollo* of G.R. No. 168387, pp. 32-33. Respondents' Memorandum, p. 7; *id.* at 125.

[7] DARAB records, p. 57.

[8] CA Decision, pp. 5-6; *rollo* of G.R. No. 168387, pp. 32-33. Respondents' Memorandum, p. 7; *id.* at 125.

regulations of the Bureau of Lands by H.O. Bauman Public Land Surveyor, [in] December 1912-March 1913. Note: All corners are Conc. Mons. 15x15x60 cm. This is Lot No. 79-A=Lot No. 159 of *Bagabag Townsite, K-27*.[9]

Subsequently, TCT No. T-62836 dated June 4, 1985 was issued for the Lantap property and contained the following description:

Beginning at a point marked "1" on plan H-105520, N. 80 deg. 32 'W., 1150.21 m. from BLLM No. 122, Irrigation project,

thence N. 61 deg. 40'E., 200.00 m. to point 2;
thence N. 28 deg. 20'E, 100.00 m. to point 3;
thence S. 61 deg. 40'E, 200.00 m. to point 4;
thence S. 28 deg. 20'W, 100.00 m. to point 1; point of beginning; containing an area of 2.0000 hectares. Bounded on the northeast, southeast, and southwest by Public land; and on the northwest by Road and public land. Bearings true. Declination 0 deg. 31'E., points referred to are marked on plan H-105520. Surveyed under authority of Section 12-22, Act No. 2874 and in accordance with existing regulations of the Bureau of Lands, by H.O. Bauman Public Land Surveyor, [in] Dec. 1912-Mar. 1913 and approved on January 6, 1932. Note: This is Lot No. 119-A Lot No. 225 of *Bagabag Townsite K-27*. All corners are B.I. Conc. Mons. 15x60 cm.[10]

Both TCTs describe their respective subjects as located in "Bagabag Townsite, K-27," without any reference to either *Barangay* Lantap or *Barangay* Murong.

On February 26, 1985, respondents Espejos bought back *one* of their lots from RBBI. The Deed of Sale[11] described the property sold as follows:

x x x do hereby SELL, TRANSFER, and CONVEY, absolutely and unconditionally x x x that certain parcel of land, situated in the Municipality of Bagabag, Province of Nueva Vizcaya, and more particularly bounded and described as follows, to wit:

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[9] DARAB records, p. 74.

[10] *Id.* at 69.

[11] *Id.* at 71-72.

> Beginning at a point marked "1" on plan x x x Containing an area of 2.000 hectares. Bounded on the NE., by Road; on the SE., and SW by Public Land; and on the NW., by Public Land, properties claimed by Hilario Gaudia and Santos Navarrete. Bearing true. Declination 013 'B. Points referred to are marked on plan H-176292.
>
> of which the Rural Bank of Bayombong (NV) Inc., is the registered owner in fee simple in accordance with the Land Registration Act, its title thereto being *evidenced by Transfer Certificate of Title No. T-62096* issued by the Registry of Deeds of Nueva Vizcaya.

As may be seen from the foregoing, the Deed of Sale did not mention the *barangay* where the property was located but mentioned the title of the property (TCT No. T-62096), which title corresponds to the Murong property. There is no evidence, however, that respondents took possession of the Murong property, or demanded lease rentals from the petitioners (who continued to be the tenants of the Murong property), or otherwise exercised acts of ownership over the Murong property. On the other hand, respondent Nemi (husband of respondent Elenita and brother-in-law of the other respondents), continued working on the other property — the Lantap property — without any evidence that he ever paid rentals to RBBI or to any landowner. The Deed of Sale was annotated on TCT No. T-62096 almost a decade later, on July 1, 1994.[12]

Meanwhile, on June 20, 1990, RBBI, pursuant to Sections 20[13] and 21[14] of Republic Act (RA) No. 6657,[15] executed

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[12] Entry No. 229242 - DEED OF ABSOLUTE SALE executed by the Rural Bank of Bayombong, NV, Inc., represented by Manager, Romeo F. Ramos, Jr., in favor of ELOISA ESPEJO, ELENITA ESPEJO, EMERITA ESPEJO, OPHIRO ESPEJO, OTHANIEL ESPEJO, ODELEJO ESPEJO, ORLANDO ESPEJO, OSMONDO ESPEJO, for the sum of ₱9,562 notarized by Miguel M. Guevara, Notary Public; under Doc. No. 51; Page No. 11; Book XIV; Series of 1985 dated February 26, 1985 and inscribed July 1, 1994 at 10:45 A.M. (*Id.* at 74).

[13] *Section 20.* **Voluntary Land Transfer**. – Landowners of agricultural lands subject to acquisition under this Act may enter into a voluntary arrangement for direct transfer of their lands to qualified beneficiaries x x x:

separate Deeds of Voluntary Land Transfer (*VLTs*) in favor of petitioners Marquez and Dela Cruz, the tenants of the Murong property. Both VLTs described the subject thereof as an agricultural land located in *Barangay* Murong *and* covered by TCT No. T-62836 (which, however, is the title corresponding to the Lantap property).[16]

After the petitioners completed the payment of the purchase price of ₱90,000.00 to RBBI, the DAR issued the corresponding Certificates of Land Ownership Award (CLOAs) to petitioners Marquez[17] and Dela Cruz[18] on September 5, 1991. Both CLOAs stated that their subjects were parcels of agricultural land situated in *Barangay* Murong.[19] The CLOAs were registered in the Registry of Deeds of Nueva Vizcaya on September 5, 1991.

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[14] *Section 21.* **Payment of Compensation by Beneficiaries under Voluntary Land Transfer**. – Direct payment in cash or in kind may be made by the farmer-beneficiary to the landowner under terms to be mutually agreed upon by both parties, which shall be binding upon them, upon registration with and approval by the DAR. Said approval shall be considered given, unless notice of disapproval is received by the farmer-beneficiary within 30 days from the date of registration. x x x

[15] COMPREHENSIVE AGRARIAN REFORM LAW of 1988.

[16] "That the LANDOWNER voluntarily transfer his ownership over a parcel of agricultural land and covered by R.A. 6657 and opted to be paid directly by the FARMER-BENEFICIARY. The said agricultural land is *situated at Murong*, Reservation Bagabag, Nueva Vizcaya and particularly described as follows:

OCT/TCT No. T-62836

x x x (CA *rollo*, pp. 93 and 96)

[17] TCT No. CLOA - 395 (DARAB records, p. 84). Registered with the Land Registration Authority on September 5, 1991.

[18] TCT No. CLOA - 396 (*Id.* at 85). Registered with the Land Registration Authority on September 5, 1991.

[19] TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

WHEREAS, pursuant to the provisions of Republic Act No. 6657, dated June 10, 1988, INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION AND PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, there is hereby awarded unto SALUN-AT MARQUEZ [and NESTOR DELA CRUZ], a parcel of agricultural land ***situated in Barangay Murong***,

On February 10, 1997 (more than 10 years after the Deed of Sale in favor of the respondents and almost seven years after the execution of VLTs in favor of the petitioners), respondents filed a Complaint[20] before the Regional Agrarian Reform Adjudicator (RARAD) of Bayombong, Nueva Vizcaya for the cancellation of petitioners' CLOAs, the deposit of leasehold rentals by petitioners in favor of respondents, and the execution of a deed of voluntary land transfer by RBBI in favor of respondent Nemi. The complaint was based on respondents' theory that the Murong property, occupied by the petitioners, was owned by the respondents by virtue of the 1985 buy-back, as documented in the Deed of Sale. They based their claim on the fact that their Deed of Sale refers to TCT No. 62096, which pertains to the Murong property.

Petitioners filed their Answer[21] and insisted that they bought the Murong property as farmer-beneficiaries thereof. They maintained that they have always displayed good faith, paid lease rentals to RBBI when it became the owner of the Murong property, bought the same from RBBI upon the honest belief that they were buying the Murong property, and occupied and exercised acts of ownership over the Murong property. Petitioners also argued that what respondents Espejos repurchased from RBBI in 1985 was actually the Lantap property, as evidenced by their continued occupation and possession of the Lantap property through respondent Nemi.

RBBI answered[22] that it was the Lantap property which was the subject of the buy-back transaction with respondents Espejos.

Municipality of Bagabag, Province of Nueva Vizcaya, Island of Luzon, Philippines, containing an area of TEN THOUSAND (10,000 sq. m.) square meters, more or less, which is now more particularly bounded and described at the back hereof.

xxx xxx xxx

Reference: This certificate is a transfer from Transfer Certificate of Title No. T-62836.

(*Id.* at 84-85).

[20] *Id.* at 1-8. Docketed as DARAB Case No. II-162-NV-97.

[21] *Id.* at 21-25.

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

It denied committing a grave mistake in the transaction and maintained its good faith in the disposition of its acquired assets in conformity with the rural banking rules and regulations.

OIC-RARAD Decision[23]

The OIC-RARAD gave precedence to the TCT numbers appearing on the Deed of Sale and the VLTs. Since TCT No. T-62096 appeared on respondents' Deed of Sale and the said title refers to the Murong property, the OIC-RARAD concluded that the subject of sale was indeed the Murong property. On the other hand, since the petitioners' VLTs referred to TCT No. T-62836, which corresponds to the Lantap property, the OIC-RARAD ruled that petitioners' CLOAs necessarily refer to the Lantap property. As for the particular description contained in the VLTs that the subject thereof is the Murong property, the OIC-RARAD ruled that it was a mere typographical error.

Further, since the VLTs covered the Lantap property and petitioners are not the actual tillers thereof, the OIC-RARAD declared that they were disqualified to become tenants of the Lantap property and ordered the cancellation of their CLOAs. It then ordered RBBI to execute a leasehold contract with the real tenant of the Lantap property, Nemi.

The OIC-RARAD recognized that petitioners' only right as the actual tillers of the Murong property is to remain as the tenants thereof after the execution of leasehold contracts with and payment of rentals in arrears to respondents.

DARAB Decision[24]

Upon appeal filed by petitioners, the DARAB reversed the OIC-RARAD Decision. It ruled that in assailing the validity of the CLOAs issued to petitioners as bona fide tenant-farmers, the burden of proof rests on the respondents. There being no evidence that the DAR field personnel were remiss in the performance of their official duties when they issued the corresponding CLOAs in favor of petitioners, the presumption

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[23] *Id.* at 79-83.

[24] *Id.* at 145-132. Docketed as DARAB Case No. 7554.

of regular performance of duty prevails. This conclusion is made more imperative by the respondents' admission that petitioners are the actual tillers of the Murong property, hence qualified beneficiaries thereof.

As for respondents' allegation that they bought back the Murong property from RBBI, the DARAB ruled that they failed to support their allegation with substantial evidence. It gave more credence to RBBI's claim that respondents repurchased the Lantap property, not the Murong property. Respondents, as owners of the Lantap property, were ordered to enter into an agricultural leasehold contract with their brother-in-law Nemi, who is the actual tenant of the Lantap property.

The DARAB ended its January 17, 2001 Decision in this wise:

> We find no basis or justification to question the authenticity and validity of the CLOAs issued to appellants as they are by operation of law qualified beneficiaries over the landholdings; there is nothing to quiet as these titles were awarded in conformity with the CARP program implementation; and finally, the Board declares that all controverted claims to or against the subject landholding must be completely and finally laid to rest.
>
> WHEREFORE, premises considered and finding reversible errors[,] the assailed decision is ANNULLED and a new judgment is hereby rendered, declaring:
>
> 1. Appellants Salun-at Marquez and Nestor Dela Cruz as the bona fide tenant-tillers over the Murong property and therefore they are the qualified beneficiaries thereof;
>
> 2. Declaring Transfer Certificate of Title (TCT) Nos. 395 and 396 issued in the name of [farmer-beneficiaries] Salun-at Marquez and Nestor Dela Cruz respectively, covered formerly by TCT No. 62096 (TCT No. 43258) of the Murong property as valid and legal;
>
> 3. Ordering the co-[respondents] to firm-up an agricultural leasehold contract with bona fide tenant-tiller Nemi Fernandez over the Lantap property, [the latter] being the subject matter of the 'buy back' arrangement entered into between [respondents] and Rural Bank of Bayombong, Incorporated, and other incidental matters are deemed resolved.

SO ORDERED.[25]

Ruling of the Court of Appeals

In appealing to the CA, the respondents insisted that the DARAB erred in ruling that they repurchased the Lantap property, while the petitioners were awarded the Murong property. They were adamant that the title numbers indicated in their respective deeds of conveyance should control in determining the subjects thereof. Since respondents' Deed of Sale expressed that its subject is the property with TCT No. T-62096, then what was sold to them was the Murong property. On the other hand, petitioners' VLTs and CLOAs say that they cover the property with TCT No. T-62836; thus it should be understood that they were awarded the Lantap property. Respondents added that since petitioners are not the actual tillers of the Lantap property, their CLOAs should be cancelled due to their lack of qualification.

The CA agreed with the respondents. Using the Best Evidence Rule embodied in Rule 130, Section 3, the CA held that the Deed of Sale is the best evidence as to its contents, particularly the description of the land which was the object of the sale. Since the Deed of Sale expressed that its subject is the land covered by TCT No. T-62096 – the Murong property – then that is the property that the respondents repurchased.

The CA further ruled that as for petitioners' VLTs, the same refer to the property with TCT No. T-62836; thus, the subject of their CLOAs is the Lantap property. The additional description in the VLTs that the subject thereof is located in *Barangay* Murong was considered to be a mere typographical error. The CA ruled that the technical description contained in the TCT is more accurate in identifying the subject property since the same particularly describes the properties' metes and bounds.

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[25] DARAB Decision, pp. 13-14; *id.* at 133-132.

Both the RBBI[26] and petitioners[27] filed their respective motions for reconsideration, which were separately denied.[28]

On June 22, 2004, RBBI filed a separate Petition for Review on *Certiorari*, docketed as G.R. No. 163320, with this Court.[29] RBBI raised the issue that the CA failed to appreciate that respondents did not come to court with clean hands because they misled RBBI to believe at the time of the sale that the two lots were not tenanted. RBBI also asked that they be declared free from any liability to the parties as it did not enrich itself at anyone's expense. RBBI's petition was dismissed on July 26, 2004 for lack of merit. The said Resolution reads:

> Considering the allegations, issues[,] and arguments adduced in the petition for review on *certiorari*, the Court Resolves to DENY the petition for lack of sufficient showing that the Court of Appeals had committed any reversible error in the questioned judgment to warrant the exercise by this Court of its discretionary appellate jurisdiction in this case.[30]

Their Motion for Reconsideration was likewise denied with finality.[31] Entry of judgment was made in that case on December 15, 2004.[32]

On July 27, 2005,[33] petitioners filed the instant petition.

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[26] CA *rollo,* pp. 142-147.

[27] *Id.* at 247-254.

[28] Resolution dated March 19, 2004 (*Id.* at 153) denying RBBI's Motion for Reconsideration; Resolution dated May 11, 2005 (*Id.* at 257-258) denying herein petitioners' Motion for Reconsideration.

[29] *Id.* at 178-190. Entitled *Rural Bank of Bayombong, Inc. represented by its President/General Manager Romeo F. Ramos, Jr., vs. Eloisa Espejo, et al.*

[30] *Rollo* of G.R. No. 163320, p. 91.

[31] *Id.* at 107.

[32] *Id.* at 108.

[33] Upon petitioners' motion, the Court issued a Resolution on July 20, 2005 granting petitioners a thirty- (30) day extension to file the Petition for Review on *Certiorari*. (*Rollo* of G.R. No. 168387, p. 8)

Issues

Rephrased and consolidated, the parties present the following issues for the Court's determination:

I

What is the effect of the final judgment dismissing RBBI's Petition for Review on *Certiorari*, which assailed the same CA Decision

II

Whether the CA erred in utilizing the Best Evidence Rule to determine the subject of the contracts

III

What are the subject properties of the parties' respective contracts with RBBI

Our Ruling

Propriety of the Petition

Respondents maintain that the instant petition for review raises factual issues which are beyond the province of Rule 45.[34]

The issues involved herein are not entirely factual. Petitioners assail the appellate court's rejection of their evidence (as to the contractual intent) as inadmissible under the Best Evidence Rule. The question involving the admissibility of evidence is a legal question that is within the Court's authority to review.[35]

Besides, even if it were a factual question, the Court is not precluded to review the same. The rule that a petition for review should raise only questions of law admits of exceptions, among which are "(1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is

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[34] Respondents' Memorandum, p. 9; *id.* at 127.

[35] See *People v. Exala*, G.R. No. 76005, April 23, 1993, 221 SCRA 494, 499; *People v. Judge Señeris*, 187 Phil. 558, 560 (1980); *People v. Alarcon*, 78 Phil. 732, 737 (1947).

based on a *misappreciation of facts*; (5) when the findings of fact are *conflicting*; (6) when, in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings 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; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record."[36]

In the instant case, we find sufficient basis to apply the exceptions to the general rule because the appellate court misappreciated the facts of the case through its erroneous application of the Best Evidence Rule, as will be discussed below. Moreover, the disparate rulings of the three reviewing bodies below are sufficient for the Court to exercise its jurisdiction under Rule 45.

First Issue
Dismissal of RBBI's appeal

Respondents maintain that the Court's earlier dismissal of RBBI's petition for review of the same CA Decision is eloquent proof that there is no reversible error in the appellate court's decision in favor of the respondents.[37]

We are not persuaded. This Court dismissed RBBI's earlier petition in G.R. No. 163320 because it failed to convincingly demonstrate the alleged errors in the CA Decision. The bank did not point out the inadequacies and errors in the appellate court's decision but simply placed the responsibility for the confusion on the respondents for allegedly misleading the bank as to the identity of the properties and for misrepresenting that the two lots were not tenanted. Thus, RBBI argued that respondents did not come to court with clean hands.

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[36] *Reyes v. Montemayor*, G.R. No. 166516, September 3, 2009, 598 SCRA 61, 74. Emphasis supplied.

[37] Respondents' Memorandum, p. 10; *rollo* of G.R. No. 168387, p. 128.

These arguments were ineffectual in convincing the Court to review the appellate court's Decision. It is the appellant's responsibility to point out the perceived errors in the appealed decision. When a party merely raises equitable considerations such as the "clean hands" doctrine without a clear-cut legal basis and cogent arguments to support his claim, there should be no surprise if the Court is not swayed to exercise its appellate jurisdiction and the appeal is dismissed outright. The dismissal of an appeal does not always and necessarily mean that the appealed decision is correct, for it could simply be the result of the appellant's inadequate discussion, ineffectual arguments, or even procedural lapses.

RBBI's failure to convince the Court of the merits of its appeal should not prejudice petitioners who were not parties to RBBI's appeal, especially because petitioners duly filed a separate appeal and were able to articulately and effectively present their arguments. A party cannot be deprived of his right to appeal an adverse decision just because another party had already appealed ahead of him,[38] or just because the other party's separate appeal had already been dismissed.[39]

There is another reason not to bind the petitioners to the final judgment against RBBI. RBBI executed the transfer (VLTs) in favor of petitioners *prior* to the commencement of the action. Thus, when the action for cancellation of CLOA was filed, RBBI had already divested itself of its title to the two properties involved. Under the rule on *res judicata*, a judgment (*in personam*) is conclusive only between the parties and their successors-in-interest by title *subsequent* to the commencement of the action.[40] Thus, when the vendor (in this case RBBI) has already transferred his title to third persons (petitioners), the said transferees are not bound by any judgment which may be rendered against the vendor.[41]

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[38] See *Borromeo v. Court of Appeals*, 162 Phil. 430, 438 (1976).

[39] See *Citibank, N.A. (Formerly First National City Bank) v. Sabeniano*, G.R. No. 156132, October 16, 2006, 504 SCRA 378, 403-405.

[40] RULES OF COURT, Rule 39, Section 47 (b).

[41] See *De Leon v. De Leon*, 98 Phil. 589, 591-592 (1956).

Second Issue
Is it correct to apply the Best Evidence Rule?

Citing the Best Evidence Rule in Rule 130, Section 3, the CA held that the Deed of Sale between respondents and RBBI is the best evidence as to the property that was sold by RBBI to the respondents. Since the Deed of Sale stated that its subject is the land covered by TCT No. T-62096 – the title for the Murong property – then the property repurchased by the respondents was the Murong property. Likewise, the CA held that since the VLTs between petitioners and RBBI refer to TCT No. T-62836 – the title for the Lantap property – then the property transferred to petitioners was the Lantap property.

Petitioners argue that the appellate court erred in using the best evidence rule to determine the subject of the Deed of Sale and the Deeds of Voluntary Land Transfer. They maintain that the issue in the case is not the contents of the contracts but the intention of the parties that was not adequately expressed in their contracts. Petitioners then argue that it is the Parol Evidence Rule that should be applied in order to adequately resolve the dispute.

Indeed, the appellate court erred in its application of the Best Evidence Rule. The Best Evidence Rule states that when the subject of inquiry is the *contents* of a document, the best evidence is the *original document* itself and no other evidence (such as a reproduction, photocopy or oral evidence) is admissible as a general rule. The original is preferred because it reduces the chance of undetected tampering with the document.[42]

In the instant case, there is no room for the application of the Best Evidence Rule because there is no dispute regarding

[42] The Best Evidence Rule comes into play when a reproduction of the original or oral evidence is offered to prove the *contents* of a document. "The purpose of the rule requiring the production of the best evidence is the prevention of fraud, because if a party is in possession of [the best] evidence and withholds it, and seeks to substitute inferior evidence in its place, the presumption naturally arises that the better evidence is withheld for fraudulent purposes which its production would expose and defeat." *Asuncion v. National Labor Relations Commission*, 414 Phil. 329, 339 (2001).

the *contents* of the documents. It is admitted by the parties that the respondents' Deed of Sale referred to TCT No. T-62096 as its subject; while the petitioners' Deeds of Voluntary Land Transfer referred to TCT No. T-62836 as its subject, which is further described as located in *Barangay* Murong.

The real issue is whether the admitted contents of these documents adequately and correctly express the true intention of the parties. As to the Deed of Sale, petitioners (and RBBI) maintain that *while it refers to TCT No. T-62096,* the parties actually intended the sale of the Lantap property (covered by TCT No. T-62836).

As to the VLTs, respondents contend that the reference to TCT No. T-62836 (corresponding to the Lantap property) reflects the true intention of RBBI and the petitioners, and the reference to "*Barangay* Murong" was a typographical error. On the other hand, petitioners claim that the reference to "*Barangay* Murong" reflects their true intention, while the reference to TCT No. T-62836 was a mere error. This dispute reflects an intrinsic ambiguity in the contracts, arising from an apparent failure of the instruments to adequately express the true intention of the parties. To resolve the ambiguity, resort must be had to evidence outside of the instruments.

The CA, however, refused to look *beyond* the literal wording of the documents and rejected any other evidence that could shed light on the actual intention of the contracting parties. Though the CA cited the Best Evidence Rule, it appears that what it actually applied was the Parol Evidence Rule instead, which provides:

> When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.[43]

The Parol Evidence Rule excludes parol or extrinsic evidence by which a party seeks to contradict, vary, add to or subtract from the terms of a valid agreement or instrument. Thus, it

[43] RULES OF COURT, Rule 130, Section 9, first paragraph.

appears that what the CA actually applied in its assailed Decision when it refused to look beyond the words of the contracts was the Parol Evidence Rule, not the Best Evidence Rule. The appellate court gave primacy to the literal terms of the two contracts and refused to admit any other evidence that would contradict such terms.

However, even the application of the Parol Evidence Rule is improper in the case at bar. In the first place, respondents are *not* parties to the VLTs executed between RBBI and petitioners; they are strangers to the written contracts. Rule 130, Section 9 specifically provides that parol evidence rule is exclusive only as "between the parties and their successors-in-interest." The parol evidence rule may not be invoked where at least one of the parties to the suit is not a party or a privy of a party to the written document in question, and does not base his claim on the instrument or assert a right originating in the instrument.[44]

Moreover, the instant case falls under the exceptions to the Parol Evidence Rule, as provided in the second paragraph of Rule 130, Section 9:

> However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:
>
> (1) An *intrinsic ambiguity, mistake or imperfection in the written agreement*;
>
> (2) The *failure of the written agreement to express the true intent and agreement of the parties thereto*;
>
> xxx xxx xxx (Emphasis supplied)

Here, the petitioners' VLTs suffer from intrinsic ambiguity. The VLTs described the subject property as covered by TCT No. T-62836 (Lantap property), but they also describe the subject property as being located in "*Barangay Murong.*" Even the respondents' Deed of Sale falls under the exception to the Parol Evidence Rule. It refers to "TCT No. T-62096" (Murong property), but RBBI contended that the true intent was to sell the Lantap property. In short, it was squarely put in issue that

[44] *Lechugas v. Court of Appeals*, 227 Phil. 310, 319 (1986).

the written agreement failed to express the true intent of the parties.

Based on the foregoing, the resolution of the instant case necessitates an examination of the parties' respective parol evidence, in order to determine the true intent of the parties. Well-settled is the rule that in case of doubt, it is the intention of the contracting parties that prevails, for the intention is the soul of a contract,[45] not its wording which is prone to mistakes, inadequacies, or ambiguities. To hold otherwise would give life, validity, and precedence to mere typographical errors and defeat the very purpose of agreements.

In this regard, guidance is provided by the following articles of the Civil Code involving the interpretation of contracts:

> Article 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.
>
> If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.
>
> Article 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.

Rule 130, Section 13 which provides for the rules on the interpretation of documents is likewise enlightening:

> Section 13. *Interpretation according to circumstances.* – For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown, so that the judge may be placed in the position of those whose language he is to interpret.

Applying the foregoing guiding rules, it is clear that the Deed of Sale was intended to transfer the Lantap property to the respondents, while the VLTs were intended to convey the Murong property to the petitioners. This may be seen from the *contemporaneous and subsequent acts* of the parties.

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[45] *Kilosbayan, Inc. v. Guingona, Jr.*, G.R. No. 113375, May 5, 1994, 232 SCRA 110, 143.

Third issue
Determining the intention of the parties regarding the subjects of their contracts

We are convinced that the subject of the Deed of Sale between RBBI and the respondents was the *Lantap property*, and not the Murong property. After the execution in 1985 of the Deed of Sale, the respondents did not exercise acts of ownership that could show that they indeed knew and believed that they repurchased the Murong property. They did not take possession of the Murong property. As admitted by the parties, the Murong property was in the possession of the petitioners, who occupied and tilled the same without any objection from the respondents. Moreover, petitioners paid leasehold rentals for using the Murong property to RBBI, not to the respondents.

Aside from respondents' neglect of their alleged ownership rights over the Murong property, there is one other circumstance that convinces us that what respondents really repurchased was the Lantap property. Respondent Nemi (husband of respondent Elenita) is the farmer actually tilling the Lantap property, without turning over the supposed landowner's share to RBBI. This strongly indicates that the respondents considered themselves (and not RBBI) as the owners of the Lantap property. For if respondents (particularly spouses Elenita and Nemi) truly believed that RBBI retained ownership of the Lantap property, how come they never complied with their obligations as supposed tenants of RBBI's land? The factual circumstances of the case simply do not support the theory propounded by the respondents.

We are likewise convinced that the subject of the Deeds of Voluntary Land Transfer (VLTs) in favor of petitioners was the *Murong property*, and not the Lantap property. When the VLTs were executed in 1990, petitioners were already the tenant-farmers of the Murong property, and had been paying rentals to RBBI accordingly. It is therefore natural that the Murong property and no other was the one that they had intended to acquire from RBBI with the execution of the VLTs. Moreover, after the execution of the VLTs, petitioners remained in possession of the Murong property, enjoying and tilling it without any

opposition from anybody. Subsequently, after the petitioners completed their payment of the total purchase price of ₱90,000.00 to RBBI, the Department of Agrarian Reform (DAR) officials conducted their investigation of the Murong property which, with the presumption of regularity in the performance of official duty, did not reveal any anomaly. Petitioners were found to be in actual possession of the Murong property and were the qualified beneficiaries thereof. Thus, the DAR officials issued CLOAs in petitioners' favor; and these CLOAs explicitly refer to the land in *Barangay* Murong. All this time, petitioners were in possession of the Murong property, undisturbed by anyone for several long years, until respondents started the controversy in 1997.

All of these contemporaneous and subsequent actions of RBBI and petitioners support their position that the subject of their contract (VLTs) is the Murong property, not the Lantap property. Conversely, there has been no contrary evidence of the parties' actuations to indicate that they intended the sale of the Lantap property. Thus, it appears that the reference in their VLT to TCT No. T-62836 (Lantap property) was due to their honest but mistaken belief that the said title covers the Murong property. Such a mistake is not farfetched considering that TCT No. T-62836 only refers to the Municipality of Bayombong, Nueva Vizcaya, and does not indicate the particular *barangay* where the property is located. Moreover, both properties are bounded by a road and public land. Hence, were it not for the detailed technical description, the titles for the two properties are very similar.

The respondents attempt to discredit petitioners' argument that their VLTs were intrinsically ambiguous and failed to express their true intention by asking why petitioners never filed an action for the reformation of their contract.[46] A cause of action for the reformation of a contract only arises when one of the contracting parties manifests an intention, by overt acts, not to abide by the true agreement of the parties.[47] It seems fairly

[46] Respondents' Memorandum, p. 16; *rollo* of G.R. No. 168387, p. 134.

[47] *Multi-Realty Development Corporation v. Makati Tuscany Condominium Corporation*, G.R. No. 146726, June 16, 2006, 491 SCRA 9, 30-31, citing *Tormon v. Cutanda,* 119 Phil. 84, 87-88 (1963).

obvious that petitioners had no cause to reform their VLTs because the parties thereto (RBBI and petitioners) never had any dispute as to the interpretation and application thereof. They both understood the VLTs to cover the Murong property (and not the Lantap property). It was only much later, when strangers to the contracts argued for a different interpretation, that the issue became relevant for the first time.

All told, we rule that the Deed of Sale dated February 26, 1985 between respondents and RBBI covers the *Lantap property* under TCT No. T-62836, while the Deeds of Voluntary Land Transfer and TCT Nos. CLOA-395 and CLOA-396 of the petitioners cover the *Murong property* under TCT No. T-62096. In consequence, the CA's ruling against RBBI should not be executed as such execution would be inconsistent with our ruling herein. Although the CA's decision had already become final and executory *as against RBBI* with the dismissal of RBBI's petition in G.R. No. 163320, our ruling herein in favor of petitioners is a supervening cause which renders the execution of the CA decision against RBBI unjust and inequitable.

WHEREFORE, the Petition for Review on *Certiorari* is *GRANTED*. The assailed October 7, 2003 Decision, as well as the May 11, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 69981 are *REVERSED and SET ASIDE*. The January 17, 2001 Decision of the DARAB Central Office is *REINSTATED*. The Deed of Sale dated February 26, 1985 between respondents and Rural Bank of Bayombong, Inc. covers the Lantap property under TCT No. T-62836, while the Deeds of Voluntary Land Transfer and TCT Nos. CLOA-395 and CLOA-396 of the petitioners cover the Murong property under TCT No. T-62096. The Register of Deeds of Nueva Vizcaya is directed to make the necessary corrections to the titles of the said properties in accordance with this Decision. Costs against respondents.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 169345. August 25, 2010]

DEE PING WEE, ARACELI WEE and MARINA U. TAN, *petitioners, vs.* **LEE HIONG WEE and ROSALIND WEE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; IMMUTABILITY OF FINAL JUDGMENT; SUPERVENING EVENT AS AN EXCEPTION; EXPLAINED.—** In *Natalia Realty, Inc. v. Court of Appeals*, the Court had the occasion to discuss the nature of supervening events, thus: One of the exceptions to the principle of immutability of final judgments is the existence of supervening events. Supervening events refer to facts which transpire after judgment has become final and executory or to new circumstances which developed after the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial as they were not yet in existence at that time. A supervening event affects or changes the substance of the judgment and renders the execution thereof inequitable. Should such an event occur after a judgment becomes final and executory, which event may render the execution of the judgment impossible or unjust, *Ramirez v. Court of Appeals* dictates that a stay or preclusion of execution may properly be sought.

2. **ID.; REPUBLIC ACT NO. 8799 (INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES); GOVERNING RULES FOR CIVIL CASES INVOLVING THE INSPECTION OF CORPORATE BOOKS; CLARIFIED.—** Civil cases involving the inspection of corporate books are governed by the rules of procedure set forth in A.M. No. 01-2-04-SC, otherwise known as the Interim Rules of Procedure for Intra-Corporate Controversies under Republic Act No. 8799 (Interim Rules). Section 4, Rule 1 of the Interim Rules defines the nature of the judgments rendered thereunder as follows: SEC. 4. *Executory nature of decisions and orders*. - **All decisions and orders issued under these**

Rules shall immediately be executory, except the awards for moral damages, exemplary damages and attorney's fees, if any. **No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court**. Interlocutory orders shall not be subject to appeal. Verily, the first part of Section 4, Rule 1 of the Interim Rules is categorical. Save for the exceptions clearly stated therein, the provision enunciates that a decision and order issued under the Interim Rules shall be enforceable immediately after the rendition thereof. In order to assail the decision or order, however, the second part of the provision speaks of an appeal or petition that needs to be filed by the party concerned. In this appeal or petition, a restraining order must be sought from the appellate court to enjoin the enforcement or implementation of the decision or order. Unless a restraining order is so issued, the decision or order rendered under the Interim Rules shall remain to be immediately executory. On September 14, 2004, the Court issued a Resolution in A.M. No. 04-9-07-SC to rectify the situation wherein "lawyers and litigants are in a quandary on how to prevent under appropriate circumstances the execution of decisions and orders in cases involving corporate rehabilitation and intra-corporate controversies." To address the "need to clarify the proper mode of appeal in [cases involving corporate rehabilitation and intra-corporate controversies] in order to prevent cluttering the dockets of the courts with appeals and/or petitions for *certiorari*," the Court thereby resolved that: 1. 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 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 Trial 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. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DISTINGUISHED FROM PETITION FOR REVIEW UNDER RULE 45; APPLICATION IN CASE AT BAR. – The term "petition" in the third and fourth paragraphs of A.M. No. 04-9-07-SC, cannot be construed as to include a petition for *certiorari* under Rule 65 of the Rules of Court. The rationale for this lies in the essential difference between a petition for review under Rule 43 and a petition for *certiorari* under Rule 65 of the Rules of Court. In *Sebastian v. Morales*, the Court underscored, thus: That a petition for *certiorari* under Rule 65 should *pro forma* satisfy the requirements for the contents of a petition for review under Rule 43 does not necessarily mean that one is the same as the other. Or that one may be treated as the other, for that matter. A petition for review is a mode of appeal, while a special civil action for *certiorari* is an extraordinary process for the correction of errors of jurisdiction. It is basic remedial law that the two remedies are distinct, mutually exclusive, and antithetical. The extraordinary remedy of *certiorari* is proper if the tribunal, board, or officer exercising judicial or quasi-judicial functions acted without or in grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal or any plain, speedy, and adequate remedy in law. A petition for review, on the other hand, seeks to correct errors of judgment committed by the court, tribunal, or officer. x x x When a court, tribunal, or officer has jurisdiction over the person and the subject matter of the dispute, the decision on all other questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil action for *certiorari*. For if every error committed by the trial court or quasi-judicial agency were to be the proper subject of review by *certiorari*, then trial would never end and the dockets of appellate courts would be clogged beyond measure. x x x. The RTC Decisions in Civil Case Nos. Q-04-091, Q-04-092 and Q-04-093 are final orders that disposed of the whole subject matter or terminated the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined. As the RTC was unquestionably acting within its jurisdiction, all errors that it might have committed in the

exercise of such jurisdiction are errors of judgment, which are reviewable by a timely appeal.

4. ID.; ID.; ID.; THE REMEDY CANNOT LIE AS A SUBSTITUTE FOR A LOST APPEAL.— In *Federation of Free Workers v. Inciong*, we reiterated the basic remedial law principle that: While the special civil action of *certiorari* may be availed of in the alternative situation where an appeal would not constitute a plain, speedy, and adequate remedy, this is on the theoretical assumption that the right to appeal is still available in the case. If, however, the remedy by appeal had already been lost and the loss was occasioned by petitioner's own neglect or error in the choice of remedies, *certiorari* cannot lie as a substitute or a tool to shield the petitioner from the adverse consequences of such neglect or error. The two remedies are mutually exclusive and not alternative or successive.

APPEARANCES OF COUNSEL

Rodriguez De Los Santos & Naidas Law Offices for petitioners.

Roselyn M. Tinio for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The case before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, which seeks to reverse the Resolutions dated June 29, 2005[2] and August 18, 2005[3] of the Court of Appeals (First Division) in CA-G.R. SP No. 90024. In the Resolution dated June 29, 2005, the appellate court denied due course to the Petition for *Certiorari* and Prohibition with prayer for issuance of a Writ of Preliminary

[1] *Rollo*, pp. 9-29.

[2] Penned by then Associate Justice Jose Catral Mendoza (now a member of this Court) with Associate Justices Romeo A. Brawner and Edgardo P. Cruz, concurring; *rollo*, pp. 33-41.

[3] *Rollo*, pp. 43-44.

Injunction and/or a Temporary Restraining Order (TRO)[4] filed by herein petitioners, which assailed the Order[5] dated April 21, 2005 of the Regional Trial Court (RTC) of Quezon City, Branch 93, in Civil Case No. Q-04-091, denying petitioners' Omnibus Motion (to Quash Writ of Execution and/or Suspend Execution).[6] The petitioners' Motion for Reconsideration[7] of the Resolution dated June 29, 2005 was denied by the Court of Appeals in the Resolution dated August 18, 2005.

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

Petitioners Dee Ping Wee and Marina U. Tan are the brother and sister of respondent Lee Hiong Wee. Petitioner Araceli Wee is the spouse of Dee Ping Wee, while respondent Rosalind Wee is the spouse of Lee Hiong Wee.

At the commencement of the controversy, petitioners Dee Ping Wee, Araceli Wee and Marina U. Tan were the majority stockholders of: (1) Marcel Trading Corporation, a domestic corporation that is primarily engaged in the business of cultivating, buying, selling at wholesale, exporting and manufacturing of seaweeds;[8] (2) Marine Resources Development Corporation, a domestic corporation that is primarily engaged in the business of cultivating, buying, selling and exporting on a wholesale basis seaweeds, seashells and other marine products;[9] and (3) First Marcel Properties, Inc., a domestic corporation that is primarily engaged in the business of acquisition, development and disposition of real estate and other kinds of structures.[10] On the other hand,

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[4] *Id.* at 228-245.

[5] Penned by then Presiding Judge Apolinario D. Bruselas, Jr. (now a Justice of the Court of Appeals); *rollo*, p. 222.

[6] *Rollo*, pp. 199-202.

[7] *Id.* at 246-252.

[8] *Id.* at 48.

[9] Records, Vol. II (Civil Case No. Q-04-092), p. 2.

[10] Records, Vol. III (Civil Case No. Q-04-093), p. 2.

respondents Lee Hiong Wee and Rosalind Wee were minority stockholders in the said corporations.

On April 16, 2004, respondents, through their counsel, sent a letter to petitioner Dee Ping Wee, demanding the inspection of the corporate records of the above corporations. The letter stated thus:

April 16, 2004

Mr. Dee Ping Wee
Marcel Tower
Araneta Avenue, Quezon City
Metro Manila

Re: Demand for Inspection and Reproduction of Corporate records and to be Furnished Financial Statements of [Marine Resources Development Corporation, First Marcel Properties, Inc. and Marcel Trading Corporation]

Dear Mr. Wee:

We write in behalf of our clients, Lee Hiong Wee and Rosalind L. Wee who as per records on file with the Securities and Exchange Commission are stockholders of Marine Resources and Development Corporation, First Marcel Properties Inc. and Marcel Trading Corporation.

Since all of these records are in the same premises which are located in Marcel Tower, our clients request that the same be made available for their (or their representatives') inspection and reproduction at the fifth floor of the said building on April 26, 2004 at 10:00 am.

Likewise, we request you to furnish our clients with financial statements of said companies for the years ending 2002 and 2003.

We shall appreciate receiving a reply from you on this matter before the said date. Otherwise, we shall take the same to mean as your refusal to comply with this request. In which case, we shall be constrained to file the necessary legal suits to enforce the rights of our clients.

Thank you,

Very truly yours,

For the Firm

(Signed)
PONCEVIC M. CEBALLOS[11]

On April 22, 2004, petitioner Dee Ping Wee replied to the above letter in the following manner, *viz*:

April 22, 2004

Atty. Poncevic Ceballos
Unit 3-E AGCOR Bldg., 335 Katipunan Ave.
Loyola Heights, Quezon City

Atty. Ceballos,

In connection with you[r] letter dated April 16, 2004, I wish to inform you that the Board of Directors of Marcel Trading Corporation and Marine Resources Development Corporation will only accede to the demand of your clients if the following conditions are fully satisfied:

1. Wee Lee Hiong and Rosalind Wee will furnish complete and true financial reports of Rico Philippines Industrial Corporation to include:

   1.1 Balance Sheet, Income Statement and Cash Flow Statements for the year 2003;

   1.2 Detailed Statement on how he disbursed the deposits he withdrew from the PBCOM, METROBANK and other depositary banks;

2. Pay back to Marcel Trading Corporation, the cash advances he obtained in 2003. Documents reveal that Marcel Trading Corporation availed of bank loan the proceeds of which was obtained by Wee Lee Hiong for the operation of Rico Philippines Industrial Corporation, aside from the own funds of Marcel Trading Corporation that was likewise loaned to RPIC. Marcel Trading Corporation had paid substantial sum of interest for the Loan and greatly affected the operations of Marcel Trading Corporation.

3. Account for the export sales made by Wee Lee Hiong of all RPIC's finished products but foreign customers were

[11] *Rollo*, p. 45.

> instructed/directed to make payments/remittances to his company's bank account/deposit in Hongkong.

The directors of [Marcel Trading Corporation and Marine Resources Development Corporation] have equal or even better rights to make such demands from your clients.

Once your client is ready to fulfill the foregoing conditions, please inform us.

Very truly,

(Signed)
DEE PING WEE[12]

As their demand letter met an unfavorable reply, respondents filed before the RTC of Quezon City, on May 12, 2004, three separate Complaints against petitioners for the inspection of the corporate books of the above-mentioned corporations. The complaint involving Marcel Trading Corporation was docketed as Civil Case No. Q-04-091,[13] while those pertaining to Marine Resources Development Corporation and First Marcel Properties, Inc. were docketed, respectively, as Civil Case No. Q-04-092[14] and Civil Case No. Q-04-093.[15]

Invoking similar causes of action in each of the complaints, respondents claimed that petitioners violated their rights to gain access to and inspect the corporate books, records and financial statements of the above corporations, which rights are guaranteed by Sections 74 and 75 of the Corporation Code.[16] In view of

[12] Records, Vol. II (Civil Case No. Q-04-092), p. 13.

[13] *Rollo*, pp. 47-53.

[14] Records, Vol. II (Civil Case No. Q-04-092), pp. 1-7.

[15] Records, Vol. III (Civil Case No. Q-04-093), pp. 1-7.

[16] Sections 74 and 75 of the Corporation Code state:

Sec. 74. *Books to be kept; stock transfer agent*. – x x x

The records of all business transactions of the corporation and the minutes of any meetings shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, writing, for a copy of excerpts from said records or minutes, at his expense.

the allegedly illegal and baseless acts of the petitioners, respondents sought payment for moral and exemplary damages, as well as attorney's fees and costs of suit.

On May 31, 2004, petitioners filed separate Answers,[17] praying for the dismissal of the complaints for lack of merit. Petitioners asserted, among others, that the letter dated April 16, 2004 of respondents' counsel failed to specify the particular records or documents they wished to inspect and the purpose for such inspection. Petitioners countered that respondents' complaints for inspection of corporate records were ill-motivated, merely contrived to harass petitioners and the controlling stockholders, sought for vexatious purposes and, therefore, not germane to respondents' rights as stockholders. The obvious purpose of respondents in demanding inspection of the corporate records was, allegedly, to fish for evidence that they could use against petitioners to regain management control of the aforementioned corporations or to find technical defects in the corporate

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Any officer or agent of the corporation who shall refuse to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: *Provided*, That if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and *Provided, further*, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.

Sec. 75. *Right to financial statements*. - Within ten (10) days from receipt of a written request of any stockholder or member, the corporation shall furnish to him its most recent financial statement, which shall include a balance sheet as of the end of the last taxable year and a profit or loss statement for said taxable year, showing in reasonable detail its assets and liabilities and the result of its operations.

[17] *Rollo*, pp. 60-70; CA *rollo* (CA-G.R. SP No. 85880), pp. 42-51; CA *rollo* (CA-G.R. SP No. 85879), pp. 39-51.

transactions so that they can file harassment suits against petitioners.[18]

On June 23, 2004, the RTC of Quezon City, Branch 93, sitting as a special commercial court, rendered three separate, but similarly worded, Decisions in Civil Case Nos. Q-04-091,[19] Q-04-092[20] and Q-04-093.[21] Except for the names of the corporations involved, the decisions of the trial court uniformly read:

> Based on the pleadings submitted and the pieces of documentary evidence attached thereto, the court is satisfied that the [respondents] Lee Hiong Wee and Rosalind L. Wee are stockholders of the corporation [Marcel Trading Corporation/Marine Resources Development Corporation/First Marcel Properties, Inc.]. **Upon the other hand, the [petitioners] have not advanced any valid ground to warrant a denial of the stockholders' right to inspect corporate books and records as well as to copies of financial statements of the corporation**.
>
> The rights of inspection and to copies of financial statements under Sections 74 and 75 are inherent in the ownership of shares of a corporation. These rights enable stockholders to know how the corporation is being managed.
>
> The stockholders' right of inspection of the corporation's books and records is based upon their ownership of the assets and property of the corporation. It is therefore, an incident of ownership of the corporate property whether this ownership or interest be termed an equitable ownership, a beneficial ownership or a quasi-ownership. This right is predicated upon the necessity of self-protection.
>
> **The exercise of these rights may be denied, however, if it is shown that the stockholders have improperly used any information secured through a previous examination or that**

[18] On May 13, 2004, respondents filed an Urgent Motion to Consolidate the three complaints [Records, Vol. I (Civil Case No. Q-04-091), pp. 14-15] but the records of the case are silent as to how the RTC resolved the same.

[19] *Rollo*, pp. 94-95.

[20] CA *rollo* (CA-G.R. SP No. 90024), pp. 75-76.

[21] *Id.* at 73-74.

the demand is purely speculative or merely to satisfy curiosity. These grounds have not been shown to be present in this case.

WHEREFORE, the foregoing premises considered, the court rules in favor of the [respondents]. The [petitioners] are accordingly directed to allow the [respondents] to exercise their right to inspect corporate books and records during business hours of any working day subject to the following conditions:

1. Written notice of when the right is to be exercised be given the [petitioners]/other appropriate officers of the corporation to allow for facility; the deployment of necessary manpower and ready availability of records to be inspected/copied and, insofar as the instant action is concerned, the following corporate records/documents spanning the period from January 2003 up to the present are to be made available:

   a. Check vouchers and checks;

   b. Debit and credit memoranda;

   c. Monthly bank statements from Metrobank, BPI, Banco de Oro, China Bank, Philippine Bank of Communications and other banks where the corporation currently maintains accounts;

   d. Records of accounts receivables and payables;

   e. Monthly inventory list;

   f. Purchase and sales books;

   g. Sales invoices;

   h. General ledgers;

   i. Worksheet;

   j. Monthly cash flow statements;

   k. Financial statements both internal and external

2. Payment of the reasonable costs of inspection and photocopying be deposited with the treasurer of the corporation which is fixed, for the purpose of the inspection herein allowed, at ₱10,000.00 initially, subject to liquidation;

3. If there be other books and records to be inspected, a schedule of these items, the desired date of inspection which must be during

business hours of any working day, and the purpose thereof, be communicated seasonably to the [petitioners]/appropriate officers of the corporation together with the payment of reasonable cost of inspection/photocopying;

4. All inspection and photocopying activities shall be carried out at the principal office and/or premises of the corporation where the corporate books, records and documents are kept.

The court fails to find any sufficient basis to award damages to the [respondents].

Costs against [petitioners]. (Citations omitted, emphasis ours.)

The records of the cases reveal that petitioners received copies of the RTC Decisions on July 7, 2004, while respondents received the same on July 8, 2004.[22]

On August 23, 2004, petitioners filed before the Court of Appeals three separate Petitions for *Certiorari* under Rule 65 of the Rules of Court, which contained the same arguments in impugning the judgments of the RTC. The petition challenging the decision in Civil Case No. Q-04-091 was docketed as CA-G.R. SP No. 85878,[23] while the petitions contesting the judgments in Civil Case Nos. Q-04-092 and Q-04-093 were docketed as CA-G.R. SP Nos. 85880[24] and 85879,[25] respectively.

Petitioners argued that they resorted to the extraordinary remedy of *certiorari* given that there was no plain, speedy and adequate remedy in the ordinary course of law and that a decision rendered in an intra-corporate controversy was immediately executory. Petitioners likewise claimed that the RTC erred when it adjudged that "the exercise of [a stockholder's right to inspect and to receive copies of financial statements] may be denied x x x if it is shown that the stockholders have improperly used

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[22] Records, Vol. I (Civil Case No. Q-04-091), back of p. 47; Records, Vol. II (Civil Case No. Q-04-092), back of p. 38; Records, Vol. III (Civil Case No. Q-04-093), back of p. 30.

[23] *Rollo*, pp. 100-118.

[24] CA *rollo* (CA-G.R. SP No. 90024), pp. 116-133.

[25] *Id.* at 98-115.

any information secured through a previous examination or that the demand is purely speculative or merely to satisfy curiosity" and that said grounds "have not been shown to be present in this case." Petitioners submitted that, other than the aforementioned grounds, a stockholder's right to inspect corporate records may also be denied (1) if the stockholder is not acting in good faith and (2) the inspection is not for a legitimate purpose. Said grounds were allegedly the very defenses relied upon by petitioners in their Answers, but the trial court ignored the same. In so doing, petitioners concluded that the RTC acted capriciously, whimsically, arbitrarily and in a despotic manner, thus committing grave abuse of discretion amounting to lack of jurisdiction. Petitioners prayed that a preliminary injunction and/or a TRO be issued, enjoining the enforcement or implementation of the Decisions of the RTC dated June 23, 2004, to prevent grave and irreparable damage to petitioners.

On August 31, 2004, petitioners filed a Motion for Consolidation[26] of the three petitions with CA-G.R. SP No. 85878, in the interest of "judicial economy and coherence and the fact that the three (3) cases involve the same parties and affecting closely related subject matters and thus involving common questions of law or facts."

CA-G.R. SP No. 85878

In a Resolution[27] dated September 2, 2004, the Court of Appeals (12th Division) dismissed the petition in CA-G.R. SP No. 85878, ratiocinating in this wise:

> While petitioners admit that appeal was an available remedy, they claim that it is not adequate, speedy and sufficient. However, other than said bare allegation, petitioners have not explained why appeal is not an adequate remedy.
>
> **Admittedly, petitioners received a copy of the assailed Decision on July 7, 2004, hence, they had fifteen (15) days**

[26] *Rollo*, pp. 155-158.

[27] Penned by Associate Justice Marina L. Buzon with Associate Justices Mario L. Guariña III and Hakim S. Abdulwahid, concurring; *rollo*, pp. 160-162.

therefrom, or until July 22, 2004, within which to appeal the same. However, it was only on August 23, 2004 that petitioners filed the instant petition for *certiorari* with this Court. The fact that the assailed Decision is immediately executory, pursuant to Section 4 of the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799, does not necessarily mean that appeal is not an adequate remedy. Under Section 10, Rule 41 of the 1997 Rules of Civil Procedure, the clerk of court of the Regional Trial Court is required to transmit to this Court the records of the appealed case within thirty (30) days after the perfection of the appeal. Likewise, Section 3, Rule 44 of the same Rules provides that if the original record is not transmitted to this Court within thirty (30) days after the perfection of the appeal, either party may file a motion with the trial court, with notice to the other, for the transmittal of such record or record on appeal. **Thus, had petitioners immediately filed a notice of appeal with respondent court, the records of Civil Case No. Q-04-091 could have been transmitted to this Court within thirty (30) days from said filing, *i.e.*, even before the instant petition was filed on August 23, 2004, and petitioners could have sought a temporary restraining order in the appealed case to stay the enforcement of the assailed Decision**.

As pointed out in *Manila Electric Company vs. Court of Appeals*, 187 SCRA 200, 205:

> "While the special civil action of *certiorari* may be availed of in the alternative situation where an appeal would not constitute a plain, speedy and adequate remedy, this is on the theoretical assumption that the right to appeal is still available in the case. If, however, the remedy by appeal had already been lost and the loss was occasioned by petitioner's own neglect or error in the choice of remedies, *certiorari* cannot lie as a substitute or a tool to shield the petitioner from the adverse consequences of such neglect or error. The two remedies are mutually exclusive and not alternative or successive."

WHEREFORE, the instant petition is ***DISMISSED***. (Emphases ours.)

Subsequently, on September 22, 2004, the Court of Appeals (12th Division) issued a Resolution,[28] which merely noted the

[28] CA *rollo* (CA-G.R. SP No. 85880), p. 139.

petitioners' Motion for Consolidation, inasmuch as the petition in CA-G.R. SP No. 85878 was already dismissed.

Petitioners filed a Motion for Reconsideration[29] of the Resolution dated September 2, 2004, but the same was denied in a Resolution[30] dated November 17, 2004.

Afterward, petitioners no longer challenged before this Court the Resolutions of the Court of Appeals (12th Division) in CA-G.R. SP No. 85878.

CA-G.R. SP No. 85880

On March 11, 2005, the Court of Appeals (Fourth Division) promulgated its Decision[31] in CA-G.R. SP No. 85880, annulling the RTC Decision dated June 23, 2004 in Civil Case No. Q-04-092. The appellate court explained thus:

> As [respondents] failed to allege their motive, purpose or reason for the inspection, the trial court, in its assailed decision, did not make any finding that the inspection sought was for a legitimate purpose. Neither can we discern, on the basis of the records of this case, that indeed the [respondents] were properly motivated in seeking an inspection of the records and books of Marine Resources Development Corporation.
>
> Consequently, in the absence of any showing of proper motive on the part of the [respondents] in seeking an inspection of the books and records of Marine Resources Development Corporation, in line with the ruling of the Supreme Court in the aforecited case of *Gonzales vs. Philippine National Bank*, we hold that the trial court patently erred and as a result thereof, gravely abused its discretion when, in its assailed decision, it ruled in favor of the [respondents], allowing them to inspect the records and books of Marine Resources Development Corporation.
>
> WHEREFORE, the instant petition for *certiorari* is hereby GRANTED. The assailed decision of the Regional Trial Court, National

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[29] CA *rollo* (CA-G.R. SP No. 85879), pp. 70-75.

[30] *Id.* at 153-154.

[31] Penned by Associate Justice Perlita J. Tria Tirona with Associate Justices Delilah Vidallon-Magtolis and Jose C. Reyes, Jr., concurring; *rollo*, pp. 185-198.

Capital Judicial Region, Branch 93, Quezon City, in Civil Case No. Q-04-092 is **ANNULLED** and **SET ASIDE**. Judgment is hereby rendered dismissing [respondents'] complaint for lack of merit.[32]

Respondents sought the reconsideration[33] of the above decision, but the Court of Appeals (Fourth Division) denied the same in a Resolution[34] dated February 7, 2006. Thereafter, the Decision dated March 11, 2005 in CA-G.R. SP No. 85880 became final and executory on March 2, 2006.[35]

CA-G.R. SP No. 85879

On April 28, 2005, the Court of Appeals (Eighth Division) rendered a Decision[36] in CA-G.R. SP No. 85879, adopting the Decision dated March 11, 2005 in CA-G.R. SP No. 85880. After quoting the relevant portions of the latter decision, the Court of Appeals (Eighth Division) adjudged that:

> This Division agrees with the x x x findings of the Fourth Division, the same having been reached after a thorough discussion of the merits of the case. The only difference between CA-G.R. SP No. 85880 and the present case is that the said case involves Marine Resources Development Corporation while this case concerns First Marcel Properties, Inc.
>
> WHEREFORE, the Decision dated March 11, 2005 rendered in CA-G.R. SP No. 85880 is hereby adopted by this Division.[37]

Respondents filed a Motion for Reconsideration[38] of the above Decision, but the same was denied in a Resolution[39] dated

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[32] *Id.* at 196-197.

[33] CA *rollo* (CA-G.R. SP No. 85880), pp. 93-127.

[34] Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Elvi John S. Asuncion and Edgardo F. Sundiam, concurring; CA *rollo* (CA-G.R. SP No. 85880), p. 207.

[35] *Rollo*, p. 324.

[36] Penned by Associate Justice Magdangal M. De Leon with Associate Justices Mariano C. del Castillo (now a member of this Court) and Regalado E. Maambong, concurring; *rollo*, pp. 224-227.

[37] *Id.* at 226.

[38] CA *rollo* (CA-G.R. SP No. 85879), pp. 114-147.

[39] *Rollo*, pp. 326-327.

May 19, 2006. Subsequently, the Decision dated April 28, 2005 in CA-G.R. SP No. 85879 became final and executory on June 27, 2006.[40]

Motion for Execution

In the interregnum, after the RTC of Quezon City promulgated the Decisions dated June 23, 2004 in Civil Case Nos. Q-04-091, Q-04-092 and Q-04-093, respondents filed a **Motion for Execution**[41] of the said decisions on September 15, 2004. Respondents averred that said motion was consistent with Rule 1, Section 4 of the Interim Rules of Procedure Governing Intra-Corporate Controversies:

> SEC. 4. *Executory nature of decisions and orders*. – All decisions and orders issued under these Rules shall immediately be executory. No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court. Interlocutory orders shall not be subject to appeal.

As there was no restraining order issued by an appellate court, enjoining the execution of the RTC decisions, respondents argued that the said execution should proceed as a matter of course.

In an Order[42] dated February 21, 2005, the RTC **denied** the Motion for Execution of the decisions in Civil Case Nos. Q-04-092 and Q-04-093, stating that "the 'Motion for Writ of Execution' cannot be granted at this time in view of the pendency of incidents with the appellate court [CA-G.R. SP No. 85879 and CA-G.R. SP No. 85880], which incidents stand to be affected by a precipitate execution of the judgments in these cases. To rule otherwise may render moot the proceedings that are pending with the higher court."

On the other hand, the RTC **granted** the Motion for Execution of the decision in Civil Case No. Q-04-091 in an Order[43] likewise

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[40] CA *rollo* (CA-G.R. SP No. 85879), p. 232.

[41] *Rollo*, pp. 163-168.

[42] *Id.* at 179.

[43] *Id.* at 180.

dated February 21, 2005. The trial court based its ruling on the fact that the petition in CA-G.R. SP No. 85878, which assailed the decision in Civil Case No. Q-04-091, had already been dismissed and the Motion for Reconsideration thereof was also denied.

On March 9, 2005, the Branch Clerk of Court of the RTC of Quezon City issued the Writ of Execution[44] in Civil Case No. Q-04-091.

On March 22, 2005, petitioners filed an **Omnibus Motion (To Quash Writ of Execution and/or Suspend Execution)**[45] in Civil Case No. Q-04-091. Petitioners observed that the Motion for Execution was based on the Court of Appeals (12th Division) Resolution dated September 2, 2004 in CA-G.R. SP No. 85878, which dismissed the petition assailing the RTC Decision dated June 23, 2004 in Civil Case No. Q-04-091. Petitioners pointed out that they subsequently received a copy of the Decision dated March 11, 2005 in CA-G.R. SP No. 85880, wherein the Court of Appeals (Fourth Division) set aside the ruling of the RTC in Civil Case No. Q-04-092 and thereby disallowed the respondents from inspecting the corporate records of Marine Resources Development Corporation. Petitioners also noted that the dismissal of the petition for *certiorari* in CA-G.R. SP No. 85878 was merely based on a technicality, *i.e.*, that petitioners should have instead filed an appeal, and that the Resolution of the Court of Appeals (12th Division) did not delve on the merits of the case. Except for the identity of the corporations concerned, petitioners posited that the Decision dated March 11, 2005 in CA-G.R. SP No. 85880 supplemented what was lacking in the Resolution dated September 2, 2004 in CA-G.R. SP No. 85878 by resolving the issue of the propriety of the intended inspection of corporate records. Thus, petitioners asserted that the Decision dated March 11, 2005 in CA-G.R. SP No. 85880 was a supervening event, which warranted the suspension of the execution of the RTC Decision dated June 23, 2004 in Civil Case No. Q-04-091.

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[44] *Id.* at 181-183.

[45] *Id.* at 199-202.

In an Order[46] dated April 21, 2005, the RTC denied the petitioners' Omnibus Motion (To Quash Writ of Execution and/or Suspend Execution), elucidating thus:

> On [petitioners'] "Omnibus Motion (to Quash Writ of Execution and/or Suspend Execution)" and subsequent related pleadings, the court resolves to deny the motion as the arguments raised therein do not sufficiently persuade the court that legal basis exists to justify the quashal of the Writ of Execution and/or suspension of its execution.
>
> It bears to note that the Resolution of the Court of Appeals [in CA-G.R. SP No. 85880], granting [petitioners'] Petition for [Certiorari] with the Court of Appeals in a similar case (Q-04-092) and the setting aside of the order of inspection which was ordered by this court, has no relevance to this case. Worthy of emphasis is that the corporation involved herein is Marcel Trading Corporation which is separate from Marine Resources Development Corporation, the corporation involved in Q-04-092.
>
> The Omnibus Motion is accordingly denied.

CA-G.R. SP No. 90024

Discontented with the above order, petitioners filed with the Court of Appeals a Petition for *Certiorari* and Prohibition with prayer for issuance of a Writ of Preliminary Injunction and/or a Temporary Restraining Order,[47] which petition was docketed as CA-G.R. SP No. 90024 and raffled to the First Division. Petitioners imputed grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC when the latter denied the petitioners' Omnibus Motion (To Quash Writ of Execution and/or Suspend Execution) and failed to consider as a supervening event the Court of Appeals (Fourth Division) Decision dated March 11, 2005 in CA-G.R. SP No. 85880, which should have warranted the suspension of the execution of the RTC Decision dated June 23, 2004 in Civil Case No. Q-04-091.

In the assailed Resolution[48] dated June 29, 2005, the Court of Appeals (First Division) denied due course to the petition, thus:

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[46] *Id.* at 222.

[47] *Id.* at 228-245.

[48] *Id.* at 33-41.

After a study of the petitions and its annexes, the Court perceived no grave abuse of discretion committed by the [RTC]. The decision was rendered on the basis of the existing law and prevailing jurisprudence. As to its execution, there is no subsequent event justifying a quashal of the writ of execution or suspension of its implementation. The [RTC] was correct when [it] stated that the corporation involved, Marcel Trading Corporation, is different, or separate from, Marine Resources Development Corporation, the corporation involved in Q-04-092.

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The burden of proof in this regard lies with the corporation who refuses a stockholder from exercising his right. It is not the other way around. A stockholder need not prove that he is in good faith and his request or demand is for a legitimate purpose. The right is there. The burden is on the corporation to show that he really has other motives not legitimate.

This issue is not novel. In the case of *Republic (PCGG) v. Sandiganbayan and Cojuangco, G.R. No. 88809, July 10, 1991*, it was ruled that the corporation has the burden **"to show that private respondent's action in seeking examination of the corporate records was moved by unlawful or ill-motivated designs which could appropriately call for a judicial protection against the exercise of such right."** x x x

xxx xxx xxx

WHEREFORE, there being no *prima facie* showing of a grave abuse of discretion, the petition is DENIED due course.

Petitioners filed a Motion for Reconsideration[49] of the above Resolution, but the Court of Appeals (First Division) likewise denied the same in the Resolution[50] dated August 18, 2005.

Thus, petitioners came to this Court *via* the instant petition, praying for the issuance of a writ of preliminary injunction and/or a TRO to enjoin the enforcement of the Writ of Execution dated March 9, 2005, pending the consideration of the petition and, ultimately, the permanent suspension of the implementation

[49] *Id.* at 246-252.

[50] *Id.* at 43-44.

of the said Writ of Execution in view of the finality of the Court of Appeals (Fourth Division) Decision dated March 11, 2005 in CA-G.R. SP No. 85880.

On October 17, 2005, the Court issued a TRO,[51] which enjoined the RTC from enforcing or implementing the Writ of Execution dated March 9, 2005 in Civil Case No. Q-04-091.

The sole issue put forward for our consideration is:

WHETHER OR NOT THE DECISIONS IN SP NO. 85880 AND 85879 RENDERED BY SEPARATE DIVISIONS OF THE COURT OF APPEALS[,] DECLARING AS IMPROPER THE INTENDED INSPECTION OF CORPORATE RECORDS OF MARINE RESOURCE DEVELOPMENT CORPORATION AND FIRST MARCEL PROPERTIES CORPORATION, CONSTITUTE A SUPERVENING EVENT WHICH WOULD WARRANT THE SUSPENSION OF EXECUTION OF THE DECISION OF THE REGIONAL TRIAL COURT GRANTING INSPECTION OF CORPORATE RECORDS OF MARCEL TRADING CORPORATION?

Petitioners reiterate their position that the Decision dated March 11, 2005 of the Court of Appeals (Fourth Division) in CA-G.R. SP No. 85880, which set aside the ruling of the RTC in Civil Case No. Q-04-092 should have been considered as a supervening event that justified the suspension of the execution of the RTC Decision dated June 23, 2004 in Civil Case No. Q-04-091. Notwithstanding the lack of identity of the corporations involved, petitioners aver that Civil Case No. Q-04-091 was factually similar to Civil Case No. Q-04-092. Thus, they claim that the RTC should have taken judicial notice of the Decision dated March 11, 2005 of the Court of Appeals (Fourth Division) in CA-G.R. SP No. 85880. Once more, petitioners highlight the fact that the dismissal of the petition in CA-G.R. SP No. 85878 was allegedly based on a mere technicality *sans* a discussion on the merits of the case. As such, the Decision in CA-G.R. SP No. 85880 only supplemented what was lacking in the Decision in CA-G.R. SP No. 85878. To the mind of petitioners, the RTC should have at least awaited the finality of

[51] *Id.* at 257-259.

the judgments in CA-G.R. SP Nos. 85880 and 85879 before it ordered the execution of the Decision dated June 23, 2004 in Civil Case No. Q-04-091.

The instant petition is devoid of merit.

After a careful review of the facts and arguments in this case, the Court finds that petitioners have already lost their right to question the RTC Decision dated June 23, 2004 in Civil Case No. Q-04-091, much less to seek the suspension of the execution thereof.

In *Natalia Realty, Inc. v. Court of Appeals*,[52] the Court had the occasion to discuss the nature of supervening events, thus:

> One of the exceptions to the principle of immutability of final judgments is the existence of supervening events. Supervening events refer to facts which transpire after judgment has become final and executory or to new circumstances which developed after the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial as they were not yet in existence at that time.

A supervening event affects or changes the substance of the judgment and renders the execution thereof inequitable.[53] Should such an event occur after a judgment becomes final and executory, which event may render the execution of the judgment impossible or unjust, *Ramirez v. Court of Appeals*[54] dictates that a stay or preclusion of execution may properly be sought.

Doubtless, the RTC Decisions dated June 23, 2004 in Civil Case Nos. Q-04-091, Q-04-092 and Q-04-093 have since become final and executory.

Civil cases involving the inspection of corporate books are governed by the rules of procedure set forth in A.M. No. 01-2-04-SC,[55] otherwise known as the Interim Rules of Procedure for

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[52] 440 Phil. 1, 23 (2002).

[53] *Javier v. Court of Appeals*, G.R. No. 96086, July 21, 1993, 224 SCRA 704, 712.

[54] G.R. No. 85469, March 18, 1992, 207 SCRA 287, 292.

[55] Took effect on April 1, 2001.

Intra-Corporate Controversies under Republic Act No. 8799[56] (Interim Rules). Section 4, Rule 1[57] of the Interim Rules defines the nature of the judgments rendered thereunder as follows:

> SEC. 4. *Executory nature of decisions and orders*. - **All decisions and orders issued under these Rules shall immediately be executory**, except the awards for moral damages, exemplary damages and attorney's fees, if any. **No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court**. Interlocutory orders shall not be subject to appeal. (Emphases ours.)

Verily, the first part of Section 4, Rule 1 of the Interim Rules is categorical. Save for the exceptions clearly stated therein, the provision enunciates that a decision and order issued under the Interim Rules shall be enforceable immediately after the rendition thereof. In order to assail the decision or order, however, the second part of the provision speaks of an appeal or petition that needs to be filed by the party concerned. In this appeal or petition, a restraining order must be sought from the appellate court to enjoin the enforcement or implementation of the decision or order. Unless a restraining order is so issued, the decision or order rendered under the Interim Rules shall remain to be immediately executory.

On September 14, 2004, the Court issued a Resolution in A.M. No. 04-9-07-SC[58] to rectify the situation wherein "lawyers and litigants are in a quandary on how to prevent under appropriate circumstances the execution of decisions and orders in cases involving corporate rehabilitation and intra-corporate controversies."[59] To address the "need to clarify the proper mode of appeal in [cases involving corporate rehabilitation and intra-corporate controversies] in order to prevent cluttering the

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[56] The Securities Regulation Code, which took effect on August 8, 2000.

[57] As amended by the Resolution dated September 19, 2006 in A.M. No. 01-2-04-SC, which took effect on October 16, 2006.

[58] Re: Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission.

[59] *Id*.

dockets of the courts with appeals and/or petitions for *certiorari*,"[60] the Court thereby resolved that:

> 1. 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 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 Trial 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. (Emphases ours.)

In the instant case, petitioners received the RTC Decisions dated June 23, 2004 in Civil Case Nos. Q-04-091, Q-04-092 and Q-04-093 on July 7, 2004. Thereafter, petitioners filed with the Court of Appeals three separate petitions for *certiorari* on August 23, 2004. On September 2, 2004, the Court of Appeals (12th Division) resolved to dismiss the petition for *certiorari* in CA-G.R. SP No. 85878, holding that the same was a mere substitute for the lost remedy of appeal. Petitioners then filed a Motion for Reconsideration on the said resolution. Thereafter, during the pendency of the Motion for Reconsideration in CA-G.R. SP No. 85878, as well as the petitions for *certiorari* in CA-G.R. SP Nos. 85880 and 85879, the Resolution in A.M. No. 04-9-07-SC took effect on October 15, 2004.

As regards the applicability of the Resolution to pending appeals or petitions, the same pertinently provided that:

> 3. **This Resolution shall apply to all pending appeals filed within the reglementary period from decisions and final**

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[60] *Id*.

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, **regardless of the mode of appeal or petition resorted to by the appellant or petitioner**.

4. These pending appeals or petitions shall be treated in the following manner:

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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.

The issue that needs to be resolved at this point is whether or not petitioners pursued the correct remedy in questioning the RTC Decisions in Civil Case Nos. Q-04-091, Q-04-092 and Q-04-093. Corollary to this is whether or not the petitions for *certiorari* filed by petitioners could have been treated as petitions for review under Rule 43 of the Rules of Court, in accordance with the provisions of the Resolution in A.M. No. 04-9-07-SC, such that petitioners can be considered to have availed themselves of the proper remedy in assailing the rulings of the RTC.

We answer in the negative.

The term "petition" in the third and fourth paragraphs of A.M. No. 04-9-07-SC, cannot be construed as to include a petition for *certiorari* under Rule 65 of the Rules of Court. The rationale for this lies in the essential difference between a petition for review under Rule 43 and a petition for *certiorari* under Rule 65 of the Rules of Court. In *Sebastian v. Morales*,[61] the Court underscored, thus:

That a petition for *certiorari* under Rule 65 should *pro forma* satisfy the requirements for the contents of a petition for review under Rule 43 does not necessarily mean that one is the same as the other. Or that one may be treated as the other, for that matter. A

[61] 445 Phil. 595, 608 (2003).

petition for review is a mode of appeal, while a special civil action for *certiorari* is an extraordinary process for the correction of errors of jurisdiction. It is basic remedial law that the two remedies are distinct, mutually exclusive, and antithetical. The extraordinary remedy of *certiorari* is proper if the tribunal, board, or officer exercising judicial or quasi-judicial functions acted without or in grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal or any plain, speedy, and adequate remedy in law. A petition for review, on the other hand, seeks to correct errors of judgment committed by the court, tribunal, or officer. x x x When a court, tribunal, or officer has jurisdiction over the person and the subject matter of the dispute, the decision on all other questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil action for *certiorari*. For if every error committed by the trial court or quasi-judicial agency were to be the proper subject of review by *certiorari*, then trial would never end and the dockets of appellate courts would be clogged beyond measure. x x x.

The RTC Decisions in Civil Case Nos. Q-04-091, Q-04-092 and Q-04-093 are final orders that disposed of the whole subject matter or terminated the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined.[62] As the RTC was unquestionably acting within its jurisdiction, all errors that it might have committed in the exercise of such jurisdiction are errors of judgment, which are reviewable by a timely appeal.

The petitioners' erroneous choice of remedy was further aggravated by the fact that the same was apparently resorted to after they lost the remedy of appeal. In their petitions for *certiorari* before the Court of Appeals, petitioners pointedly stated that "while it may be true that appeal was an available remedy, the same is not adequate or equally beneficial, speedy and sufficient."[63] This is plainly inaccurate. As previously discussed, petitioners

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[62] *De Ocampo v. Republic*, 118 Phil. 1276, 1280 (1963).

[63] CA *rollo* (CA-G.R. SP No. 85879), p. 4; CA *rollo* (CA-G.R. SP No. 85880), p. 4.

received the RTC Decisions in Civil Case Nos. Q-04-091, Q-04-092 and Q-04-093 on July 7, 2004. From then on, petitioners filed the three separate petitions for *certiorari* with the Court of Appeals on August 23, 2004, or forty-seven (47) days after receipt of the RTC Decisions. In *Federation of Free Workers v. Inciong*,[64] we reiterated the basic remedial law principle that:

> While the special civil action of *certiorari* may be availed of in the alternative situation where an appeal would not constitute a plain, speedy, and adequate remedy, this is on the theoretical assumption that the right to appeal is still available in the case. If, however, the remedy by appeal had already been lost and the loss was occasioned by petitioner's own neglect or error in the choice of remedies, *certiorari* cannot lie as a substitute or a tool to shield the petitioner from the adverse consequences of such neglect or error. The two remedies are mutually exclusive and not alternative or successive.

Although the above doctrine admits of certain exceptions,[65] none of them was sufficiently proven to apply in the instant case.

The Court of Appeals (12th Division) was, therefore, correct in dismissing the petition for *certiorari* in CA-G.R. SP No. 85878, which assailed the RTC Decision in Civil Case No. Q-04-091. Contrariwise, the Fourth and Eighth Divisions of the Court of Appeals should not have assumed jurisdiction over the petitions for *certiorari* in CA-G.R. SP Nos. 85880 and 85879, respectively. The Court likewise notes that after taking cognizance of the petitions filed before them on August 23, 2004, the latter two divisions of the Court of Appeals even failed to issue a preliminary injunction and/or a TRO, enjoining the enforcement or implementation of the RTC Decisions in Civil Case Nos. Q-04-092 and Q-04-093. Thus, in view of the foregoing, the RTC

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[64] G.R. No. 49983, April 20, 1992, 208 SCRA 157, 164.

[65] The exceptions are: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority. (*Hanjin Engineering and Construction Co. Ltd./Nam Hyum Kim v. Court of Appeals*, G.R. No. 165910, April 10, 2006, 487 SCRA 78, 100.)

Decisions dated June 23, 2004 in Civil Case Nos. Q-04-091, Q-04-092 and Q-04-093 remained to be immediately executory.

Nevertheless, it did not escape our attention that the RTC granted only the respondents' motion for execution in Civil Case No. Q-04-091 and denied the similar motions in Civil Case Nos. Q-04-092 and Q-04-093. Significantly, respondents no longer questioned the RTC Order denying the motions for execution in the latter two cases. The ultimate issue that petitioners elevated to this Court pertained to the propriety of the issuance of the writ of execution of the RTC Decision in Civil Case No. Q-04-091. Thus, we accordingly limit our discussion thereto.

Petitioners contend that the supervening event which developed after the finality of the judgment in Civil Case No. Q-04-091 is the Decision dated March 11, 2005 of the Court of Appeals (Fourth Division) in CA-G.R. SP No. 85880.

We disagree.

There is nothing in the Decision in CA-G.R. SP No. 85880 that affects or changes the substance of the judgment in Civil Case No. Q-04-091 and renders the execution of the same inequitable.

The petition for *certiorari* in CA-G.R. SP No. 85880 was filed in order to dispute the judgment in the RTC Decision in Civil Case No. Q-04-092. In the said case, respondents sought to gain access to and inspect the corporate books and records of **Marine Resources Development Corporation**. On the other hand, in Civil Case No. Q-04-091, respondents entreated that they be allowed to inspect the corporate books and records of **Marcel Trading Corporation**. Despite the fact that the parties to this case are all stockholders in the said corporations and the respondents invoked the same provisions of law, the cases filed before the RTC were entirely distinct from and independent of each other. The two corporations involved are primarily engaged in different businesses and do not share exactly the same set of stockholders. The records of the case are also silent with respect to the consolidation of the cases before the trial court. Thus,

any ruling on Civil Case No. Q-04-092 would not materially alter the substance of the judgment in Civil Case No. Q-04-091, which would render the execution of the latter case inequitable.

Additionally, the Court of Appeals (Fourth Division) in CA-G.R. SP No. 85880 adjudged that the RTC patently erred in deciding in favor of respondents since the latter failed to show that they were impelled by proper motives in seeking to inspect the corporate records of Marine Resources Development Corporation.

However, as correctly held by the Court of Appeals (First Division) in the assailed Resolution dated June 29, 2005 in CA-G.R. SP No. 90024, *Republic v. Sandiganbayan*[66] has already settled that the burden of proof lies with the corporation who refuses to grant to the stockholder the right to inspect corporate records. In said case, Eduardo Cojuangco, Jr. sought the inspection and examination of the corporate records of San Miguel Corporation (SMC) and United Coconut Planters Bank (UCPB). As the shares of Cojuangco in the aforementioned corporations had previously been sequestered by the Presidential Commission on Good Government (PCGG), the requests for inspection were coursed through the said government agency. The PCGG, thereafter, denied Cojuangco's requests, arguing that the purpose of the latter was merely to satisfy his curiosity regarding the performance of SMC and UCPB. In rejecting PCGG's line of reasoning, the Court ruled that:

> [T]he argument is devoid of merit. Records indicate that [Cojuangco] is the ostensible owner of a substantial number of shares and is a stockholder of record in SMC and UCPB. Being a stockholder beyond doubt, there is therefore no reason why [Cojuangco] may not exercise his statutory right of inspection in accordance with Sec. 74 of the Corporation Code, the only express limitation being that the right of inspection should be exercised at reasonable hours on business days; 2) the person demanding to examine and copy excerpts from the corporation's records and minutes has not improperly used any information secured through any previous examination of the records

[66] G.R. No. 88809, July 10, 1991, 199 SCRA 39, 46-47.

of such corporation; and 3) the demand is made in good faith or for a legitimate purpose. The latter two limitations, however, must be set up as a defense by the corporation if it is to merit judicial cognizance. As such, and in the absence of evidence, the PCGG cannot unilaterally deny a stockholder from exercising his statutory right of inspection based on an unsupported and naked assertion that private respondent's motive is improper or merely for curiosity or on the ground that the stockholder is not in friendly terms with the corporation's officers.

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In the case at bar, [PCGG] failed to discharge the burden of proof to show that [Cojuangco's] action in seeking examination of the corporate records was moved by unlawful or ill-motivated designs which could appropriately call for a judicial protection against the exercise of such right. Save for its unsubstantiated allegations, [PCGG] could offer no proof, nay, not even a scintilla of evidence that respondent Cojuangco, Jr., was motivated by bad faith; that the demand was for an illegitimate purpose or that the demand was impelled by speculation or idle curiosity. Surely, [Cojuangco's] substantial shareholdings in the SMC and UCPB cannot be an object of mere curiosity. (Emphasis ours.)

The Court is fully aware that the Decision dated March 11, 2005 of the Court of Appeals (Fourth Division) in CA-G.R. SP No. 85880 and the Decision dated April 28, 2005 of the Court of Appeals (Eighth Division) in CA-G.R. SP No. 85879, which adopted the ruling of the Fourth Division, had already become final and executory for failure of respondents to appeal therefrom. The Court may no longer disturb the same in these proceedings. In any event, the applicability of the said decisions of the Court of Appeals (Fourth and Eighth Divisions) is limited to the letter-demand for the inspection of corporate records of Marine Resources Development Corporation (Civil Case No. Q-04-092) and First Marine Properties, Inc. (Civil Case No. Q-04-093) made by respondents on April 16, 2004.

In light of the foregoing, the Court declares that petitioners cannot rely on the Decision dated March 11, 2005 in CA-G.R. SP No. 85880 nor the Decision dated April 28, 2005 in CA-

G.R. SP No. 85879 in order to pray for the permanent suspension of the writ of execution in Civil Case No. Q-04-091. The execution of the Decision dated June 23, 2004 in Civil Case No. Q-04-091 should now proceed as a matter of course.

WHEREFORE, the Court hereby:

(1) *DENIES* the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court;

(2) *AFFIRMS* the Resolutions dated June 29, 2005 and August 18, 2005 of the Court of Appeals in CA-G.R. SP No. 90024;

(3) *REMANDS* the records of this case to the Regional Trial Court of Quezon City, Branch 93, for the immediate execution of the Decision dated June 23, 2004 in Civil Case No. Q-04-091; and

(4) *LIFTS* the Temporary Restraining Order issued on October 17, 2005.

Costs against petitioners.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Nachura,[*] and *Perez, JJ.*, concur.

[*] Per Raffle dated August 2, 2010.

THIRD DIVISION

[G.R. No. 170146. August 25, 2010]

HON. WALDO Q. FLORES, in his capacity as Senior Deputy Executive Secretary in the Office of the President, HON. ARTHUR P. AUTEA, in his capacity as Deputy Executive Secretary in the Office of the President, and the PRESIDENTIAL ANTI-GRAFT COMMISSION (PAGC), *petitioners, vs.* **ATTY. ANTONIO F. MONTEMAYOR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; PENDENCY THEREOF DOES NOT DIVEST A LOWER COURT OR AN ADMINISTRATIVE BODY OF ITS JURISDICTION OVER A CASE FILED BEFORE IT.— The filing of a petition for *certiorari* with the CA did not divest the PAGC of its jurisdiction validly acquired over the case before it. Elementary is the rule that the mere pendency of a special civil action for *certiorari*, commenced in relation to a case pending before a lower court or an administrative body such as the PAGC, does not interrupt the course of the latter where there is no writ of injunction restraining it. For as long as no writ of injunction or restraining order is issued in the special civil action for *certiorari*, no impediment exists, and nothing prevents the PAGC from exercising its jurisdiction and proceeding with the case pending before its office. And even if such injunctive writ or order is issued, the PAGC continues to retain jurisdiction over the principal action until the question on jurisdiction is finally determined.

2. POLITICAL LAW; ADMINISTRATIVE LAW; DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS; EXPLAINED.— The essence of due process in administrative proceedings is an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of. So long as the party is given the opportunity to explain his side, the requirements of due process are satisfactorily complied with.

3. ID.; ID.; SWORN STATEMENT OF ASSETS AND LIABILITIES (SSAL); REQUIRED TO BE ACCOMPLISHED TRUTHFULLY AND IN DETAIL WITHOUT DISTINCTION AS TO HOW THE PROPERTY WAS ACQUIRED; VIOLATION IN CASE AT BAR.— The law requires that the SSAL be accomplished truthfully and in detail without distinction as to how the property was acquired. Montemayor, therefore, cannot escape liability by arguing that the ownership of the 2001 Ford Expedition has not yet passed to him on the basis of a lame excuse that the said vehicle was acquired only on installment basis sometime on July 3, 2001. The law requires that the SSAL must be accomplished as truthfully, as detailed and as accurately as possible. The filing thereof not later than the first fifteen (15) days of April at the close of every calendar year must not be treated as a simple and trivial routine, but as an obligation that is part and parcel of every civil servant's duty to the people. It serves as the basis of the government and the people in monitoring the income and lifestyle of officials and employees in the government in compliance with the Constitutional policy to eradicate corruption, promote transparency in government, and ensure that all government employees and officials lead just and modest lives. It is for this reason that the SSAL must be sworn to and is made accessible to the public, subject to reasonable administrative regulations. Montemayor's repeated and consistent failure to reflect truthfully and adequately all his assets and liabilities in his SSAL betrays his claim of innocence and good faith. Accordingly, we find that the penalty of dismissal from government service, as sanctioned by Section 11 (a) and (b) of RA No. 6713, meted by the Office of the President against him, is proper.

BERSAMIN, *J.*, *dissenting opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE LAW; SECURITY OF TENURE; GUARANTEED UNDER THE CONSTITUTION AND THE STATUTES.— Section 2(3), Article IX-B of the Constitution provides that "no officer or employee of the civil service shall be removed or suspended except for cause provided by law." Both the *Civil Service Law* and the *Administrative Code of 1987* reflect this constitutional

edict of security of tenure for employees in the Civil Service. The guarantee of security of tenure under the Constitution and the statutes is an important cornerstone of the Civil Service system instituted in our country, because it secures for a faithful employee permanence of employment, at least for the period prescribed by law, and *frees the employee from the fear of political and personal reprisals*.

2. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; WHEN PRESENT. – I contend that the OP's complete reliance on the PAGC's findings and recommendation constituted a gross violation of administrative due process as set forth in *Ang Tibay v. Court of Industrial Relations*, to wit: **1. There must be a hearing, which includes the right to present one's case and to submit evidence in support thereof; 2. The tribunal must consider the evidence presented;** 3**.** The decision must have something to support itself; 4. The evidence must be substantial; 5. The decision must be rendered on the evidence presented at the hearing or, at least, contained in the record and disclosed to the parties. **6. The tribunal or any of its judges must act on its or his own independent consideration of the facts and the law of the controversy, and not simply accept the views of a subordinate in arriving at a decision; and** 7. The board or body should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision. It is clear from *Ang Tibay* that the OP should have *itself* reviewed and appreciated the evidence presented and *independently* considered the facts and the law of the controversy, because the PAGC was only the OP's fact-finding subordinate. The OP could not just accept the entire findings and recommendation of the PAGC in arriving at a decision, considering that such a shortcut was unfair and impermissible. Thereby, the OP took for granted the fact that at stake were the honor, the reputation, and the livelihood of the person administratively charged. The OP's action consequently left its decision bereft of proper factual and legal basis.

3. ID.; EXECUTIVE DEPARTMENT; PRESIDENT; POWER TO INVESTIGATE AND DISCIPLINE A PRESIDENTIAL APPOINTEE; NATURE THEREOF, EXPLAINED.— I wish to stress that the President's power to investigate and discipline a presidential appointee was *original*, not appellate. If we were

to accord deference to the rule of *delegata potestas delegare non potest*, therefore, such original power could not be delegated to the subordinate PAGC, in the absence of any law that expressly authorized the delegation, for the rule was rooted in the ethical principle that delegated power constituted not only a *right* but a *duty* to be performed by the delegate *through the instrumentality of his own judgment*, not through the intervening mind of another. This inevitably signified that the OP should *directly* exercise its power, instead of simply adopting the PAGC's entire findings and recommendation. Yet, by holding itself as an appellate body in relation to the PAGC, which, in the first place, was not even performing adjudicative powers, and by deeming itself bound and concluded by the PAGC's findings and recommendation, the OP committed manifest grave abuse of discretion in the exercise of its vaunted power to investigate and discipline. The OP's jurisdictional error should be overturned.

4. ID.; ADMINISTRATIVE LAW; SWORN STATEMENT OF ASSETS AND LIABILITIES (SSAL); FAILURE TO ACCOMPLISH AND SUBMIT; PENALTIES, EXPLAINED. — The penalty for a violation of the provisions of RA 6713, inclusive of the failure to accomplish and submit SSAL under Section 8, *supra*, is not exclusively removal or dismissal of the erring public official or employee. Section 11 (b) should be applied *in conjunction with* Section 11 (a), which specifies a punishment of *either* a (1) fine not exceeding the equivalent of six months salary, *or* (2) suspension not exceeding one year, *or* (3) removal, *depending on the gravity of the offense*. Thus, although Section 11 (b) states that a violation of the provisions of RA 6713, if proven in a proper administrative proceeding and warranted depending on the gravity of the offense, shall be sufficient cause for the removal or dismissal of the public official or employee even without a criminal prosecution, such provision cannot be understood as immediately warranting dismissal without due regard to the gravity of the offense. Moreover, Section 12 of RA 6713 entrusts the primary responsibility to administer and enforce RA 6713 in the Civil Service Commission (CSC); and expressly vests in the CSC the authority to promulgate rules and regulations necessary to carry out the provisions of RA 6713.

5. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY.— There was a great disparity between the violation or offense committed by the respondent, on one hand, and the penalty imposed on him, on the other hand. We should not allow the disparity to last, for a grave injustice is committed in the name of justice when the penalty imposed is grossly disproportionate to the wrong committed. The disparity is offensive to our consistent adherence to the principle that the penalty to be imposed on any erring employee must be commensurate with the gravity of his offense. As we held in *Civil Service Commission v. Ledesma*: We stress that the law does not tolerate misconduct by a civil servant. Public service is a public trust, and whoever breaks that trust is subject to sanction. **Dismissal and forfeiture of benefits, however, are not penalties imposed for all infractions, particularly when it is a first offense. There must be substantial evidence that grave misconduct or some other grave offense meriting dismissal under the law was committed.** It is not amiss to cite *Cavite Crusade for Good Governance v. Judge Cajigal*, where the Court found the respondent presiding judge of the Regional Trial Court in Cavite guilty of violation of Section 7 of RA 3019 and Section 8 of RA 6713 for his failure to file on time his SSAL and his non-filing of his SSAL in some years. In imposing the penalty against him, the Court gave due consideration to his service in the Judiciary and to the fact that he later filed his SSAL, and *suspended* him for six months without pay but ordered him to pay a fine of ₱20,000.00, with a stern warning that a repetition of the same or similar acts would be dealt with more severely.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a Rule 45 petition assailing the October 19, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 84254. The appellate court, in the said decision, had reversed and set aside the March 23, 2004 Decision[2] and May 13, 2004

[1] *Rollo*, pp. 56-67. Penned by Associate Justice Rosmari D. Carandang, with Associate Justice (now Presiding Justice) Andres B. Reyes, Jr. and Associate Justice Monina Arevalo-Zenarosa concurring.

[2] *Id.* at 86-91.

Resolution[3] of the Office of the President in O.P. Case No. 03-1-581 finding respondent Atty. Antonio F. Montemayor administratively liable as charged and dismissing him from government service.

The facts follow.

Respondent Atty. Antonio F. Montemayor was appointed by the President as Regional Director II of the Bureau of Internal Revenue (BIR), Region IV, in San Fernando, Pampanga.

On January 30, 2003, the Office of the President received a letter from "a concerned citizen" dated January 20, 2003 relating Montemayor's ostentatious lifestyle which is apparently disproportionate to his income as a public official. The letter was referred to Dario C. Rama, Chairman of the Presidential Anti-Graft Commission (PAGC) for appropriate action.[4] The Investigating Office of the PAGC immediately conducted a fact-finding inquiry into the matter and issued *subpoenas duces tecum* to the responsible personnel of the BIR and the Land Transportation Office (LTO). In compliance with the subpoena, BIR Personnel Division Chief Estelita Datu submitted to the PAGC a copy of Montemayor's appointment papers along with a certified true copy of the latter's Sworn Statement of Assets and Liabilities (SSAL) for the year 2002. Meanwhile, the LTO, through its Records Section Chief, Ms. Arabelle O. Petilla, furnished the PAGC with a record of vehicles registered to Montemayor, to wit: a 2001 Ford Expedition, a 1997 Toyota Land Cruiser, and a 1983 Mitsubishi Galant.[5]

During the pendency of the investigation, the Philippine Center for Investigative Journalism, a media organization which had previously published an article on the unexplained wealth of certain BIR officials, also submitted to the PAGC copies of Montemayor's SSAL for the years 1999, 2000 and 2001.[6] In

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[3] *Id.* at 92-93.

[4] *Id.* at 69.

[5] CA *rollo*, pp. 73-74.

[6] *Id.* at 70-72.

Montemayor's 1999 and 2000 SSAL, the PAGC noted that Montemayor declared his ownership over several motor vehicles, but failed to do the same in his 2001 SSAL.[7]

On the basis of the said documents, the PAGC issued a Formal Charge[8] against Montemayor on May 19, 2003 for violation of Section 7 of Republic Act (RA) No. 3019[9] in relation to Section 8 (A) of RA No. 6713[10] due to his failure to declare the 2001

[7] *Id.*

[8] *Rollo*, p. 71.

[9] Section 7 of RA No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, provides in full:

SEC. 7. *Statement of Assets and Liabilities.* – Every public officer, within thirty days after assuming office and, thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or Chief of an independent office, with the Office of the President, a true, detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: *Provided*, That public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of the said calendar year.

[10] Section 8 (A) of RA No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, as amended, provides in part:

SEC. 8. *Statements and Disclosure.* – Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, the assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) *Statement of Assets and Liabilities and Financial Disclosure.* – All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

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Ford Expedition with a value ranging from 1.7 million to 1.9 million pesos, and the 1997 Toyota Land Cruiser with an estimated value of 1 million to 1.2 million pesos in his 2001[11] and 2002[12] SSAL. The charge was docketed as PAGC-ADM-0149-03. On the same date, the PAGC issued an Order[13] directing Montemayor to file his counter-affidavit or verified answer to the formal charge against him within ten (10) days from the receipt of the Order. Montemayor, however, failed to submit his counter-affidavit or verified answer to the formal charge lodged against him.

On June 4, 2003, during the preliminary conference, Montemayor, through counsel, moved for the deferment of the administrative proceedings explaining that he has filed a petition for *certiorari* before the CA[14] questioning the PAGC's jurisdiction to conduct the administrative investigation against him. The PAGC denied Montemayor's motion for lack of merit, and instead gave him until June 9, 2003 to submit his counter-affidavit or verified answer.[15] Still, no answer was filed.

On June 23, 2003, the CA issued a Temporary Restraining Order (TRO) in CA-G.R. SP No. 77285 enjoining the PAGC from proceeding with the investigation for sixty (60) days.[16] On September 12, 2003, shortly after the expiration of the sixty (60)-day TRO, the PAGC issued a Resolution[17] finding

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All public officials and employees required under this section to file the aforestated documents shall also execute within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman, to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible the year when they first assumed any office in the Government.

[11] CA *rollo*, p. 72.

[12] *Id.* at 91-92.

[13] *Id.* at 50-51.

[14] Docketed as CA-G.R. SP No. 77285. See CA *rollo*, pp. 53-66.

[15] CA *rollo*, pp. 83-85.

[16] *Id.* at 87.

[17] In PAGC-ADM-0149-03. See *rollo*, pp. 72-85.

Montemayor administratively liable as charged and recommending to the Office of the President Montemayor's dismissal from the service.

On March 23, 2004, the Office of the President, through Deputy Executive Secretary Arthur P. Autea, issued a Decision adopting *in toto* the findings and recommendation of the PAGC. The pertinent portion of the Decision reads:

> After a circumspect study of the case, this Office fully agrees with the recommendation of PAGC and the legal premises as well as the factual findings that hold it together. Respondent failed to disclose in his 2001 and 2002 SSAL high-priced vehicles in breach of the prescription of the relevant provisions of RA No. 3019 in relation to RA No. 6713. He was, to be sure, afforded ample opportunity to explain his failure, but he opted to let the opportunity pass by.
>
> WHEREFORE, premises considered, respondent Antonio F. Montemayor is hereby found administratively liable as charged and, as recommended by PAGC, meted the penalty of dismissal from the service, with all accessory penalties.
>
> SO ORDERED.[18]

Montemayor sought reconsideration of the said decision.[19] This time, he argued that he was denied his right to due process when the PAGC proceeded to investigate his case notwithstanding the pendency of his petition for *certiorari* before the CA, and its subsequent elevation to the Supreme Court.[20] The motion was eventually denied.[21]

Aggrieved, Montemayor brought the matter to the CA *via* a petition for review[22] under Rule 43 of the 1997 Rules of Civil

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[18] *Rollo*, p. 90.

[19] CA *rollo*, pp. 35-45.

[20] Docketed as G.R. No. 160443. The said petition for review on *certiorari* was eventually dismissed through a minute Resolution dated January 26, 2004. See *rollo*, p. 170.

[21] *Rollo*, pp. 92-93.

[22] CA *rollo*, pp. 4-26.

Procedure, as amended. He made the following assertions: *first*, that the PAGC exceeded its authority when it recommended that he be dismissed from government service since the power to investigate does not necessarily carry with it the power to impose penalty unless the same was expressly granted; *second*, that the PAGC grossly violated his right to due process of law when it did not give him the opportunity to present his countervailing evidence to the charges against him; *third*, that the PAGC cannot validly proceed with the investigation of the charges against him on the basis of an unverified anonymous letter-complaint without any supporting documents attached thereto, contrary to the requirement of Section 4 (c) of Executive Order (EO) No. 12;[23] *fourth*, that it was an error for the Office of the President to hold him liable for violation of Section 7 of RA No. 3019 and Section 8 (A) of RA No. 6713 since the SSAL should reflect assets and liabilities acquired in the preceding year; and *fifth*, that the assailed PAGC Resolution was not supported by substantial evidence.

As aforesaid, the CA in its assailed Decision dated October 19, 2005, ruled in favor of Montemayor. The CA concluded that Montemayor was deprived of an opportunity to present controverting evidence amounting to a brazen denial of his right to due process.

Hence, petitioners now appeal the matter before us raising the following issues:

I. WHETHER PETITIONER PAGC HAD A CONSTITUTIONAL DUTY TO ACCORD RESPONDENT A "SECOND" OPPORTUNITY TO PRESENT EVIDENCE IN PAGC-ADM-

[23] Section 4 (c) of EO No. 12, series of 2001, entitled "Creating the Presidential Anti-Graft Commission and Providing for its Powers, Duties and Functions and for Other Purposes," provides:

SECTION 4. Jurisdiction, Powers and Functions. –

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(c) Anonymous complaints against a presidential appointee shall not be given due course unless there appears on its face or the supporting documents attached to the anonymous complaint a probable cause to engender a belief that the allegations may be true.

0149-03 AFTER THE EXPIRATION OF THE TRO ISSUED IN CA-G.R. SP NO. 77285.

II. WHETHER THE MERE PENDENCY OF CA-G.R. SP NO. 77285 WAS A LEGAL GROUND FOR RESPONDENT'S REFUSAL TO PRESENT EVIDENCE IN [PAGC]-ADM-0149-03.

III. WHETHER THE ALLEGED UNDUE HASTE AND APPARENT PRECIPITATION OF PROCEEDINGS IN [PAGC]-ADM-0149-03 HAD RENDERED THE SAME INFIRM.

IV. WHETHER RESPONDENT HAD COMMITTED A MAJOR ADMINISTRATIVE INFRACTION WARRANTING DISMISSAL FROM [GOVERNMENT] SERVICE.

V. WHETHER THE [OFFICE OF THE PRESIDENT'S] DETERMINATION THAT RESPONDENT COMMITTED THE ADMINISTRATIVE OFFENSE CHARGED IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

VI. WHETHER THE PAGC HAD AUTHORITY TO RECOMMEND TO THE PRESIDENT THE PENALTY OF DISMISSAL, FOLLOWING ITS INVESTIGATION INITIATED BY AN ANONYMOUS COMPLAINT, AND DESPITE THE PENDENCY OF ANOTHER INVESTIGATION FOR THE SAME OFFENSE BEFORE THE [OFFICE OF THE] OMBUDSMAN.[24]

The issues may be summarized as follows:

I. WHETHER RESPONDENT WAS DEPRIVED OF HIS RIGHT TO DUE PROCESS WHEN IT PROCEEDED TO INVESTIGATE HIM ON THE BASIS OF AN ANONYMOUS COMPLAINT, AND ALLEGEDLY WITHOUT AN OPPORTUNITY TO PRESENT EVIDENCE IN HIS DEFENSE;

II. WHETHER THE PAGC HAS THE AUTHORITY TO RECOMMEND RESPONDENT'S DISMISSAL FROM THE SERVICE;

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[24] *Rollo*, pp. 233-234.

III. WHETHER THE ASSUMPTION BY THE OFFICE OF THE OMBUDSMAN OF ITS JURISDICTION TO INVESTIGATE RESPONDENT FOR THE SAME OFFENSE DEPRIVED THE PAGC [WITH ITS JURISDICTION] FROM PROCEEDING WITH ITS INVESTIGATION; AND

IV. WHETHER THE PAGC'S RECOMMENDATION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

We discuss the first three (3) issues jointly as these involve procedural aspects.

The PAGC was created by virtue of EO No. 12, signed on April 16, 2001 to speedily address the problem on corruption and abuses committed in the government, particularly by officials appointed by the President. Under Section 4 (b) of EO No. 12, the PAGC has the power to investigate and hear administrative complaints provided (1) that the official to be investigated must be a presidential appointee in the government or any of its agencies or instrumentalities, and (2) that the said official must be occupying the position of assistant regional director, or an equivalent rank, or higher.[25]

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[25] Section 4 (b) of EO No. 12, series of 2001, provides in full:

SECTION 4. Jurisdiction, Powers and Functions. –

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(b) The Commission, acting as a collegial body, shall have the authority to investigate or hear administrative cases or complaints against all presidential appointees in the government and any of its agencies or instrumentalities (including members of the governing board of any instrumentality, regulatory agency, chartered institution and directors or officers appointed or nominated by the President to government-owned or controlled corporations or corporations where the government has a minority interest or who otherwise represent the interests of the government), occupying the position of assistant regional director, or an equivalent rank, and higher, otherwise classified as Salary Grade "26" and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758). In the same manner, the Commission shall have jurisdiction to investigate a non-presidential appointee who may have acted in conspiracy or may have been involved with a presidential appointee or ranking officer mentioned in this subsection. The Commission shall have no jurisdiction over members of the Armed Forces of the Philippines and the Philippine National Police.

Respondent contends that he was deprived of his right to due process when the PAGC proceeded to investigate him on the basis of an anonymous complaint in the absence of any documents supporting the complainant's assertions.

Section 4 (c) of EO No. 12, however, states that the PAGC has the power to give due course to anonymous complaints against presidential appointees if there appears on the face of the complaint or based on the supporting documents attached to the anonymous complaint a probable cause to engender a belief that the allegations may be true.[26] The use of the conjunctive word "or" in the said provision is determinative since it empowers the PAGC to exercise discretion in giving due course to anonymous complaints. Because of the said provision, an anonymous complaint may be given due course even if the same is without supporting documents, so long as it appears from the face of the complaint that there is probable cause. The clear implication of the said provision is intent to empower the PAGC in line with the President's objective of eradicating corruption among a particular line of government officials, *i.e.*, those directly appointed by her. Absent the conjunctive word "or," the PAGC's authority to conduct investigations based on anonymous complaints will be very limited. It will decimate the said administrative body into a toothless anti-corruption agency and will inevitably undermine the Chief Executive's disciplinary power.

Respondent also assails the PAGC's decision to proceed with the investigation process without giving him the opportunity to present controverting evidence.

The argument is without merit.

We find nothing irregular with the PAGC's decision to proceed with its investigation notwithstanding the pendency of Montemayor's petition for *certiorari* before the CA. The filing of a petition for *certiorari* with the CA did not divest the PAGC of its jurisdiction validly acquired over the case before it. Elementary is the rule that the mere pendency of a special civil action for *certiorari*, commenced in relation to a case pending

[26] *Supra* note 23.

before a lower court or an administrative body such as the PAGC, does not interrupt the course of the latter where there is no writ of injunction restraining it.[27] For as long as no writ of injunction or restraining order is issued in the special civil action for *certiorari*, no impediment exists, and nothing prevents the PAGC from exercising its jurisdiction and proceeding with the case pending before its office.[28] And even if such injunctive writ or order is issued, the PAGC continues to retain jurisdiction over the principal action[29] until the question on jurisdiction is finally determined.

In the case at bar, a sixty (60)-day TRO was issued by the CA in CA-G.R. SP No. 77285. However, barely a week after the lapse of the TRO, the PAGC issued its resolution finding Montemayor administratively liable and recommending to the Office of the President his dismissal from government service. The CA believes that there has been "undue haste and apparent precipitation" in the PAGC's investigation proceedings.[30] It notes with disapproval the fact that it was barely eight (8) days after the TRO had lapsed that the PAGC issued the said resolution and explains that respondent should have been given a second chance to present evidence prior to proceeding with the issuance of the said resolution.[31]

We beg to disagree with the appellate court's observation.

First, it must be remembered that the PAGC's act of issuing the assailed resolution enjoys the presumption of regularity particularly since it was done in the performance of its official duties. Mere surmises and conjectures, absent any proof whatsoever, will not tilt the balance against the presumption, if only to provide constancy in the official acts of authorized government personnel and officials. Simply put, the timing of

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[27] *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 647.

[28] *Id.* at 647-648.

[29] *Id.* at 648.

[30] *Rollo*, p. 62.

[31] *Id.* at 62-64.

the issuance of the assailed PAGC resolution by itself cannot be used to discredit, much less nullify, what appears on its face to be a regular performance of the PAGC's duties.

Second, Montemayor's argument, as well as the CA's observation that respondent was not afforded a "second" opportunity to present controverting evidence, does not hold water. The essence of due process in administrative proceedings is an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of.[32] So long as the party is given the opportunity to explain his side, the requirements of due process are satisfactorily complied with.[33]

Significantly, the records show that the PAGC issued an order informing Montemayor of the formal charge filed against him and gave him ten (10) days within which to present a counter-affidavit or verified answer.[34] When the said period lapsed without respondent asking for an extension, the PAGC gave Montemayor a fresh ten (10)-day period to file his answer,[35] but the latter chose to await the decision of the CA in his petition for *certiorari*.[36] During the preliminary conference, Montemayor was again informed that he is given a new ten (10)-day period, or until June 19, 2003 within which to file his memorandum/ position paper as well as supporting evidence with a warning that if he still fails to do so, the complaint shall be deemed submitted for resolution on the basis of available documentary evidence on record.[37] Again, the deadline lapsed without any evidence being presented by Montemayor in his defense.

We stress that the PAGC's findings and recommendations remain as recommendations until finally acted upon by the Office

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[32] *Arboleda v. National Labor Relations Commission*, G.R. No. 119509, February 11, 1999, 303 SCRA 38, 45.

[33] *Calma v. Court of Appeals*, G.R. No. 122787, February 9, 1999, 302 SCRA 682, 689.

[34] *Rollo*, pp. 132-133.

[35] *Id.* at 149-150.

[36] *Id.* at 151-154.

[37] *Id.* at 155-158.

of the President. Montemayor, therefore, had two (2) choices upon the issuance of the PAGC resolution: to move for a reconsideration thereof, or to ask for another opportunity before the Office of the President to present his side particularly since the assailed resolution is merely recommendatory in nature. Having failed to exercise any of these two (2) options, Montemayor cannot now be allowed to seek recourse before this Court for the consequences of his own shortcomings.

Desperately, Montemayor contends that the authority of the PAGC to investigate him administratively, as well as the power of the Office of the President to act on the PAGC's recommendation, had already ceased following the initiation and filing of the administrative and criminal cases against him by the Office of the Ombudsman (Ombudsman).[38] He points out that the Ombudsman is mandated by Section 15, paragraph (1) of RA No. 6770[39] to take over the investigation and prosecution of the charges filed against him.[40]

We are still not persuaded.

The cases filed against respondent before the Ombudsman were initiated after the Office of the President decided to dismiss Montemayor.[41] More importantly, the proceedings before the PAGC were already finished even prior to the initiation and filing of cases against him by the Ombudsman. In fact, it was

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[38] Docketed as OMB-C-A-04-0096-C and OMB-C-C-04-0084-C.

[39] Paragraph (1) of Section 15 of RA No. 6770, otherwise known as the Ombudsman Act of 1989, provides in part:

SEC. 15. *Powers, Functions and Duties.* – The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

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[40] *Rollo*, pp. 182-183.

[41] *Id.* at 204-205.

the PAGC's findings and recommendations which served as the basis in the Office of the President's decision to dismiss Montemayor from government service. Clearly then, the exercise by the Office of the President of its concurrent investigatory and prosecutorial power over Montemayor had already been terminated even before the Ombudsman could take cognizance over the matter. The Ombudsman, therefore, cannot take over a task that is already a *fait accompli*.

As to the substantive aspect, *i.e.*, whether the PAGC's recommendation to dismiss Montemayor from government service is supported by substantial evidence, we find in favor of petitioners.

Montemayor's argument that he did not deliberately omit to declare the 2001 Ford Expedition in his 2001 SSAL and the 1997 Toyota Land Cruiser in his 2001 and 2002 SSAL fails to persuade us. Even if a motor vehicle was acquired through chattel mortgage, it is a government employee's ethical and legal obligation to declare and include the same in his SSAL. Montemayor cannot wiggle his way out of the mess he has himself created since he knows for a fact that every asset acquired by a civil servant must be declared in the SSAL. The law requires that the SSAL be accomplished truthfully and in detail without distinction as to how the property was acquired. Montemayor, therefore, cannot escape liability by arguing that the ownership of the 2001 Ford Expedition has not yet passed to him on the basis of a lame excuse that the said vehicle was acquired only on installment basis sometime on July 3, 2001.[42]

Montemayor also argues that even if ownership of the said vehicle had been transferred to him upon acquisition, the vehicle was sold to another person on December 15, 2002;[43] hence, there is no need to declare it in his 2001 SSAL. Respondent's reasoning is anemic and convoluted. It is evasive of the fact that the said vehicle was not reported in his 2001 SSAL. Notably, the acquisition value of the 2001 Ford Expedition was

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[42] *Id.* at 109-110 and 127-129.

[43] *Id.* at 110 and 130.

₱1,599,000.00[44] is significantly greater than the amount declared by Montemayor under "machinery/equipment," worth ₱1,321,212.50, acquired by him as of December 31, 2001,[45] and to the ₱1,251,675.00 worth of "machinery/equipment" acquired by him as of December 31, 2002.[46] This belies Montemayor's claim that the said vehicle has been included among the "machinery/equipment" assets he declared in his 2001 and 2002 SSAL.[47] Neither did Montemayor satisfactorily reflect the ₱1,000,000.00 that has come to his hands as payment for the alleged sale of his 2001 Ford Expedition in his 2002 SSAL.[48]

Respondent apparently fails to understand that the SSAL is not a mere scrap of paper. The law requires that the SSAL must be accomplished as truthfully, as detailed and as accurately as possible. The filing thereof not later than the first fifteen (15) days of April at the close of every calendar year must not be treated as a simple and trivial routine, but as an obligation that is part and parcel of every civil servant's duty to the people. It serves as the basis of the government and the people in monitoring the income and lifestyle of officials and employees in the government in compliance with the Constitutional policy to eradicate corruption,[49] promote transparency in government,[50] and ensure that all government employees and officials lead just and modest lives.[51] It is for this reason that the SSAL must

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[44] *Id.* at 129.

[45] CA *rollo*, p. 72 and unnumbered reverse page.

[46] *Supra* note 12.

[47] *Id.* at 18.

[48] *Rollo*, p. 130; CA *rollo*, pp. 91-92.

[49] Section 27, Art. II of the 1987 Constitution provides in full:

SEC. 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.

[50] Section 28, Art. II of the 1987 Constitution provides in full:

SEC. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

[51] Section 1, Art. XI of the 1987 Constitution provides in full:

be sworn to and is made accessible to the public, subject to reasonable administrative regulations.

Montemayor's repeated and consistent failure to reflect truthfully and adequately all his assets and liabilities in his SSAL betrays his claim of innocence and good faith. Accordingly, we find that the penalty of dismissal from government service, as sanctioned by Section 11 (a) and (b) of RA No. 6713,[52] meted by the Office of the President against him, is proper.

WHEREFORE, the petition is *GRANTED*. The assailed Decision dated October 19, 2005 of the Court of Appeals in CA-G.R. SP No. 84254 is *REVERSED* and *SET ASIDE*. Accordingly, the March 23, 2004 Decision and the May 13, 2004 Resolution of the Office of the President in O.P. Case No. 03-1-581 are *REINSTATED and UPHELD*.

Respondent Atty. Antonio F. Montemayor is hereby *DISMISSED* from government service.

SECTION 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

[52] Section 11 of RA No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, as amended, provides in full:

SEC. 11. *Penalties.* – (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity committing any violation of this Act, shall be punished with a fine not exceeding the equivalent of six (6) months salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (₱5,000.00) or both, and in the discretion of the court of competent jurisdiction, disqualification to hold public office.

(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.

xxx xxx xxx

SO ORDERED.

Carpio Morales (Chairperson), Brion, and *Sereno, JJ.,* concur.

Bersamin, J., dissents.

DISSENTING OPINION

BERSAMIN, *J.*:

I vote to deny the petition.

Firstly, I believe that the Court of Appeals (CA) correctly held that the petitioner had not been afforded his right to due process.

And, secondly, assuming that the investigation of the respondent by the Presidential Anti-Graft Commission (PAGC) was sustainable, and that the Office of the President (OP) validly relied on PAGC's findings and recommendation, the penalty of dismissal was too harsh.

Antecedents

The PAGC investigated the respondent, Atty. Antonio F. Montemayor, a Regional Director II of the Bureau of Internal Revenue in San Fernando, Pampanga, based on an anonymous letter-complaint. Following its fact-finding inquiry, the PAGC concluded that the respondent had failed to declare in his 2001 and 2002 Sworn Statement of Assets and Liability (SSAL) the fact that in 2001 he had acquired a 2001 model Ford Expedition and a Toyota Land Cruiser.[1]

The PAGC then directed the respondent to file his counter-affidavit or verified answer.[2] However, he failed to submit his counter-affidavit or verified answer.

On June 4, 2003, the respondent moved[3] for the deferment of the proceedings due to his filing of a petition for *certiorari*

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

[2] *Id.*, pp. 132-133.

[3] CA *Rollo,* pp. 77-80.

in the CA (CA-G.R. SP No. 77285), in order to challenge the PAGC's jurisdiction to conduct an administrative investigation against him. The PAGC denied the motion for deferment, and instead required him to submit his counter-affidavit or verified answer until June 9, 2003 and his position paper on or before June 19, 2003.[4] Still, he filed neither a counter-affidavit or verified answer nor a position paper.

On June 23, 2010, the CA issued a temporary restraining order (TRO),[5] enjoining the PAGC from investigating the respondent. The TRO lapsed after 60 days.

On September 1, 2003, which was shortly after the lapse of the TRO but during the pendency of CA-G.R. SP No. 77285, the PAGC came up with a resolution,[6] whereby it found the respondent guilty as administratively charged and recommended his dismissal from government service to the OP.

It is noteworthy that the respondent was not given a copy of the prejudicial PAGC resolution.

On March 23, 2004, the OP issued its decision,[7] adopting the findings and recommendation of the PAGC in full, and decreeing thus:

> WHEREFORE, premises considered, respondent Antonio F. Montemayor is hereby found administratively liable as charged and, as recommended by PAGC, meted the penalty of dismissal from the service, with all accessory penalties.
>
> SO ORDERED.

The respondent sought reconsideration of the OP decision, arguing that he had been denied his right to due process; that PAGC had overstepped its bounds; and that the decision had erred in holding him liable for violation of Section 7, RA 3019, as amended, and/or Section 8, RA 6713.

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[4] *Id*., pp. 83-86.

[5] *Id*., pp. 87-88.

[6] *Rollo*, pp. 72-85.

[7] *Id*., pp. 86-91.

The OP denied the motion through the resolution dated May 13, 2004.

The respondent thus went to the CA on appeal *via* petition for review (Rule 43 of the *Rules of Court*).[8]

In its decision dated October 19, 2005,[9] the CA held in favor of the respondent and set aside the decision of the OP, mainly because the CA found that the respondent had been deprived of the opportunity to present controverting evidence amounting to a denial of his right to due process; and because a public document attached to the record tended to show "in no uncertain terms that petitioner was justified when he did not include and declare the 2001 Ford Expedition in his 2002 SSAL." The CA decreed:

> WHEREFORE, premises considered, finding the impropriety of petitioner's discharge from government service on ground of violation of due process, the herein impugned March 23, 2004 Decision and May 13, 2004 Resolution of the Office of the President are hereby REVERSED and SET ASIDE.
>
> SO ORDERED.[10]

The petitioners, through the Office of the Solicitor General, are now before us to assail the CA decision.

Submissions

The reasons for my vote to deny the petition follow.

A.
The respondent was denied due process

Section 2(3), Article IX-B of the Constitution provides that "no officer or employee of the civil service shall be removed or suspended except for cause provided by law." Both the *Civil*

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[8] CA *Rollo*, pp. 4-26.

[9] CA Decision penned by Justice Rosmari D. Carandang, and concurred in by Associate Justices Andres B. Reyes, Jr. (now Presiding Justice of the CA) and Monina Arevalo-Zenarosa (retired); *rollo*, pp. 56-67.

[10] *Id.*, p. 66.

Service Law and the *Administrative Code of 1987* reflect this constitutional edict of security of tenure for employees in the Civil Service.

The guarantee of security of tenure under the Constitution and the statutes is an important cornerstone of the Civil Service system instituted in our country, because it secures for a faithful employee permanence of employment, at least for the period prescribed by law, and *frees the employee from the fear of political and personal reprisals*.[11]

Being a Regional Director II of the Bureau of Internal Revenue in San Fernando, Pampanga, the respondent occupied a Career Executive Service Position, which was included in the Civil Service and protected with security of tenure pursuant to Presidential Decree No. 807 (*Civil Service Law*).[12] *He might be removed only for cause and in accordance with procedural due process*.[13] Consequently, that the respondent was a presidential appointee did not give the appointing authority the license to remove him at will or at the appointing authority's pleasure.

However, the records show that the PAGC subjected the respondent to a unilateral investigation and did not afford due process of law to him. The PAGC crowned its investigation with the rushed resolution issued only a few days from the

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[11] *Batangas State University v. Bonifacio*, G.R. No. 1677762, December 15, 2005, 478 SCRA 142, 148.

[12] Section 5 of P.D. 807 provides:

Section. 5. **The Career Service shall be characterized by** (1) entrance based on merit and fitness to be determined as far as practicable by competitive examinations, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) **security of tenure**. The **Career Service shall include**: x x x

3. Positions in the Career Service; namely Undersecretary x x x **Regional Director** x x x and other officers of equivalent rank as may be identified by the Career Service Board, all of whom are appointed by the President;

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[13] See *Larin v. Executive Secreatary*, G.R. No. 112745, October 16, 1997, 280 SCRA 713, 725.

expiration of the TRO issued by the CA. Such resolution became the basis for the OP to decide against him by dismissing him from the service.

I submit that the investigation of the PAGC suffered from fundamental defects and flaws that infirmed the OP's decision against the respondent.

Firstly, the respondent's non-submission of his counter-affidavit or verified answer as directed by PAGC was not motivated by bad faith, considering his firm belief, then and now, that the PAGC did not have jurisdiction to administratively or disciplinarily investigate him. On the contrary, his non-submission should not be taken against him, for his act of bringing the suit in the CA precisely to challenge the PAGC's jurisdiction singularly exhibited his undeterred resolve to contest the charges made against him.

Secondly, there was a rush on the part of the PAGC to find the respondent guilty of the charges. The rush was clearly manifested in the issuance by the PAGC of its resolution against him even without taking into consideration any explanation and refutation of the charges that he might make, and even before the CA could finally resolve his suit to challenge the PAGC's jurisdiction to investigate him.

The rush of the PAGC to find the respondent guilty of the charges and to recommend his dismissal from the service did not escape the attention of the CA, which forthrightly observed, *viz*:[14]

> After a careful analysis of the procedural antecedents surrounding the instant case *vis-à-vis* the foregoing doctrine on the matter of due process, **it did not escape Us that undue haste and apparent precipitation attended the proceedings before the PAGC, which ultimately recommended the dismissal of petitioner from government service to the OP. Quite clearly, the PAGC issued the September 1, 2003 Resolution/Report recommending to the Office of the President petitioner's discharge by relying solely**

[14] *Rollo*, pp. 62-64.

upon the documentary evidence that it secured from the BIR, LTO, and PCIJ, and without having the benefit of passing upon and evaluating the evidence that petitioner might have to offer to establish that he does not deserve to be discharged from government service. It is to be remembered that in a resolution promulgated on June 23, 2003 in CA-G.R. SP No. 77285, this Court issued a 60-day Temporary Restraining Order enjoining the PAGC from concluding further administrative proceedings against petitioner. **Technically speaking, in the name of fair play, petitioner should have been afforded by PAGC a reasonable opportunity to present evidence after the expiration of the 60-day TRO. Such, though, was not to be the case. As it turned out, the PAGC immediately issued the Resolution/Report to recommend petitioner's dismissal from government service just barely eight days after the TRO in CA-G.R. SP No. 77285 has lapsed, and without anymore requiring or directing petitioner to adduce evidence to show his innocence. Certainly, the undue haste that attended the issuance of the PAGC "dismissal-recommendation", which was referred to the OP, practically precluded and foreclosed any opportunity on the part of petitioner to rebut and defend himself against the administrative charge leveled against him. And this, to the well-considered view of this Court is tantamount to a denial of petitioner's right to due process of law, specifically considering that the administrative sanction involved herein is by no means trivial and ignorable, but on the contrary, the same involved termination from government service which is the ultimate and harshest penalty that may be meted upon a government personnel. This being so, under the circumstances, the OP should have taken notice of the suddenness of the issuance of the recommendation of the PAGC, and the fact that the same was anchored principally and solely upon the documents obtained from the BIR, LTO, and PCIJ, but without any rebuttal or countervailing evidence coming from petitioner, and a combination of these facts should have led the OP to refuse to adopt and be swayed by the PAGC recommendation on ground that petitioner's right to be heard and present evidence may have been rendered at naught.**

Yet, simple prudence and innate fairness should have dictated that the PAGC first accorded to the respondent an opportunity to respond to the charges once the TRO issued by the CA expired without the writ of injunction being issued – simple

prudence, considering that his challenge to the PAGC's jurisdiction *remained* at that point an issue still to be resolved by the CA; and innate fairness, considering that he was entitled to *all* safeguards because his honor, reputation, and career were on the line. That opportunity would be to enable him to render his explanation in his defense; after all, there was no urgency to discipline him! Denying him such opportunity was ignoring his right to be heard upon a matter that put his entire career on the line.

Thirdly, the majority consider the respondent to have abandoned his right to present evidence by failing to move for a reconsideration of the PAGC resolution, or seeking another opportunity to present his side.

I submit that the respondent did not abandon his right to present evidence. For one, the records bear out that the PAGC resolution came to his knowledge *for the first time* only when he received the OP decision dated March 23, 2004. Before then, he had not been furnished any copy of the PAGC resolution. Surely, he had no opportunity to move for reconsideration of the resolution before the PAGC. Moreover, I cannot but note that he *quickly* assailed the OP decision dated March 23, 2004 (which he had received only on April 14, 2004)[15] by timely filing on April 19, 2004 a *Motion for Reconsideration With Motion For Leave To Admit Explanation/Refutation of Complaint*,[16] wherein he rendered his explanation and refutation of the charges leveled against him.

And, *fourthly*, the recitals of the OP resolution dated May 13, 2004 (denying the respondent's *Motion for Reconsideration With Motion For Leave To Admit Explanation/Refutation of Complaint*) disclose that the OP entirely adopted the findings and recommendation of the PAGC, *viz*:

This refers to the motion of Antonio F. Montemayor seeking reconsideration of the Decision of this Office dated March 23, 2004,

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

[16] *CA Rollo*, pp. 35-45.

and accordingly prays that a new one be rendered, reversing and setting aside the earlier decision, ultimately exonerating him from the charges.

It will be recalled that this Office, in the assailed Decision, fully agreed with the recommendation of the Presidential Anti-Graft Commission (PAGC), upholding the legal premises and factual findings contained in said decision.

Movant raises the following grounds:

1. Respondent was deprived of due process.

2. PAGC overstepped its bounds.

3. The Decision erred in holding respondent liable for violation of Section 7, RA 3019, as amended, and/or Section 8 of RA 6713.

The motion has to fail. **The issues raised involve factual matter**, which movants attempts to argue prolifically. **However**, as held in the earlier Decision of this Office, **the** "**findings of fact and conclusions of any adjudicative body, which can be considered as a trier of facts on specific matters within its field of expertise, should be considered as binding and conclusive upon the appellate courts** when supported by substantial evidence, as they were in a better position to assess and evaluate the credibility of the contending parties and the validity of their respective evidence."

Upon due consideration, this Office finds no cogent reason to disturb its earlier Decision. **We have carefully reviewed the arguments raised in the instant motion and find the same to be a mere reiteration of matters previously considered and found to be without merit** in the assailed decision. A motion for reconsideration which does not make out "*any new matter sufficiently persuasive to induce modification of judgment will be denied*."[17]

I contend that the OP's complete reliance on the PAGC's findings and recommendation constituted a gross violation of administrative due process as set forth in *Ang Tibay v. Court of Industrial Relations*,[18] to wit:

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[17] Underscoring is supplied for emphasis only.

[18] 69 *Phil.* 635, (1940).

1. There must be a hearing, which includes the right to present one's case and to submit evidence in support thereof;

2. The tribunal must consider the evidence presented;

3. The decision must have something to support itself;

4. The evidence must be substantial;

5. The decision must be rendered on the evidence presented at the hearing or, at least, contained in the record and disclosed to the parties;

6. The tribunal or any of its judges must act on its or his own independent consideration of the facts and the law of the controversy, and not simply accept the views of a subordinate in arriving at a decision; and

7. The board or body should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision.

It is clear from *Ang Tibay* that the OP should have *itself* reviewed and appreciated the evidence presented and *independently* considered the facts and the law of the controversy, because the PAGC was only the OP's fact-finding subordinate. The OP could not just accept the entire findings and recommendation of the PAGC in arriving at a decision, considering that such a shortcut was unfair and impermissible. Thereby, the OP took for granted the fact that at stake were the honor, the reputation, and the livelihood of the person administratively charged.[19] The OP's action consequently left its decision bereft of proper factual and legal basis.

Furthermore, the OP's statement that the respondent's arguments in his *Motion for Reconsideration With Motion For Leave To Admit Explanation/Refutation of Complaint* were "a mere reiteration of matters previously considered" was a *patent*

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[19] *DOH v. Camposano*, G.R. No. 157684, April 27, 2005, 457 SCRA 438, 454.

untruth. The OP conveniently and unfoundedly ignored that neither the PAGC nor the OP had earlier considered and taken into account his evidence and explanation (of the alleged failure to disclose the acquired vehicles in his SAL) which were being presented in the case *only for the first time* through the *Motion for Reconsideration With Motion For Leave To Admit Explanation/Refutation of Complaint*.

Would the result be probably different had the OP *itself* considered and passed upon the explanation and evidence submitted in the *Motion for Reconsideration With Motion For Leave To Admit Explanation/Refutation of Complaint*?

I maintain so.

The OP, if objective and fair-minded, was *likely* not to have immediately adopted the PAGC's findings and recommendation, but, instead, would have easily found in favor of the respondent, for there were good and valid reasons towards that end. The CA held so in its decision:[20]

> Furthermore, a public document attached on record tends to show in no uncertain terms that petitioner was justified when he did not include and declare the 2001 Ford Expedition in his 2002 SSAL. Apparently, petitioner already conveyed and transferred the ownership over the 2001 Ford Expedition in favor of a certain Raymundo Ramon P. Lacson on the strength of a duly notarized Deed of Sale of Motor Vehicle executed on December 15, 2002 (*Rollo* p. 39). Perforce, while it may have been true that petitioner still remains as the registered owner of the 2001 Ford Expedition, this supposed ownership extends only in so far as LTO registration and recording purposes are concerned, but strictly and legally speaking, real and actual ownership over the subject automobile has already been completely divested and effectively transferred from petitioner to Raymundo Ramon P. Lacson. In the case of *Aguilar, Sr. vs. Commercial Savings Bank* (360 SCRA 395), the High Court pronounced, in essence, that automobile registration is required not to make said registration the operative act to determine the identity of the person to whom the ownership over the subject automobile is actually transferred

[20] *Rollo*, pp. 65-66.

and vested. Unlike in land registration cases, the administrative proceeding of registration does not bear any essential relation to the contract of sale between the parties (*Chinchilla v. Rafael & Verdague*, 39 Phil. 888). **The main aim of motor vehicle registration is merely to identify the registered owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefore can be fixed on a definite and specific individual, that is, the registered owner. Bringing this instructive doctrine to the fore, it is clear that while petitioner is still the owner of the 2001 Ford Expedition per LTO registration, the contrary is true as far as the actual facts are concerned, for the real owner of the said automobile since December 15, 2002 is already Raymundo Ramon P. Lacson. Simply put, petitioner not being the owner of the 2001 Ford Expedition anymore as early as December 15, 2002, there is no longer any legal necessity or obligation for him to include and declare the said automobile in his 2002 SSAL, which covers only those properties actually owned by petitioner as of December 31, 2002.**

Also, the OP's statement in the resolution dated May 13, 2004 that the "findings of fact and conclusions of any adjudicative body, which can be considered as a trier of facts on specific matters within its field of expertise, should be considered as binding and conclusive upon the appellate courts when supported by substantial evidence" unraveled yet another weakness infecting the OP's decision against the respondent. The statement *spotlighted* two fundamental errors, namely: *one*, contrary to the *Ang Tibay* dictum, the OP did not *itself* consider and pass upon the evidence and explanation being submitted by the respondent for the first time; and, *two*, the OP unwarrantedly considered itself appellate in relation to the PAGC.

Having just explained the first of the fundamental errors, I need only to expound on the second one now.

I wish to stress that the President's power to investigate and discipline a presidential appointee was *original*, not appellate. If we were to accord deference to the rule of *delegata potestas delegare non potest*, therefore, such original power could not

be delegated to the subordinate PAGC, in the absence of any law that expressly authorized the delegation, for the rule was rooted in the ethical principle that delegated power constituted not only a *right* but a *duty* to be performed by the delegate *through the instrumentality of his own judgment*, not through the intervening mind of another.[21] This inevitably signified that the OP should *directly* exercise its power, instead of simply adopting the PAGC's entire findings and recommendation.

Yet, by holding itself as an appellate body in relation to the PAGC, which, in the first place, was not even performing adjudicative powers, and by deeming itself bound and concluded by the PAGC's findings and recommendation, the OP committed manifest grave abuse of discretion in the exercise of its vaunted power to investigate and discipline. The OP's jurisdictional error should be overturned.

B.
Penalty of dismissal was too harsh

The OP dismissed the respondent for his failure to declare some vehicles in his 2001 and 2002 SSAL, *viz*:

> After a circumspect study of the case, this Office fully agrees with the findings that hold it together. Respondent failed to disclose in his 2001 and 2002 SSAL high-priced vehicles in breach of the prescription of the relevant provisions of RA No. 3019 in relation to RA No. 6713. He was, to be sure, afforded ample opportunity to explain his failure, but he opted to let the opportunity pass by.
>
> WHEREFORE, premises considered, respondent Antonio F. Montemayor is hereby found administratively liable as charged and, as recommended by PAGC, meted the penalty of dismissal from the service, with all accessory penalties.
>
> SO ORDERED.[22]

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[21] *United States v. Barrias*, 11 Phil. 327, 330 (1908).

[22] *Rollo*, p. 90.

In proceeding against the respondent, both the PAGC and the OP relied upon the following provisions of Republic Act No. 6713,[23] thus:

Section 8. *Statements and Disclosure.* – **Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.**

(A) *Statements of Assets and Liabilities and Financial Disclosure.* – **All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.**

xxx xxx xxx

Section 11. *Penalties.* – (a) **Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency.** If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (₱5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

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[23] *An Act Establishing A Code Of Conduct And Ethical Standards For Public Officials And Employees, To Uphold The Time-Honored Principle Of Public Office Being A Public Trust, Granting Incentives And Rewards For Exemplary Service, Enumerating Prohibited Acts And Transactions And Providing Penalties For Violations Thereof, And For Other Purposes.*

(b) **Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.**

xxx xxx xxx

Section 12. *Promulgation of Rules and Regulations, Administration and Enforcement of this Act.* - The Civil Service Commission shall have the primary responsibility for the administration and enforcement of this Act. It shall transmit all cases for prosecution arising from violations of this Act to the proper authorities for appropriate action: Provided, however, That it may institute such administrative actions and disciplinary measures as may be warranted in accordance with law. Nothing in this provision shall be construed as a deprivation of the right of each House of Congress to discipline its Members for disorderly behavior.

The Civil Service Commission is hereby authorized to promulgate rules and regulations necessary to carry out the provisions of this Act, including guidelines for individuals who render free voluntary service to the Government. The Ombudsman shall likewise take steps to protect citizens who denounce acts or omissions of public officials and employees which are in violation of this Act.

It is clear from the foregoing provisions, however, that the penalty for a violation of the provisions of RA 6713, inclusive of the failure to accomplish and submit SSAL under Section 8, *supra*, is not exclusively removal or dismissal of the erring public official or employee. Section 11 (b) should be applied *in conjunction with* Section 11 (a), which specifies a punishment of *either* a (1) fine not exceeding the equivalent of six months salary, *or* (2) suspension not exceeding one year, *or* (3) removal, *depending on the gravity of the offense*. Thus, although Section 11 (b) states that a violation of the provisions of RA 6713, if proven in a proper administrative proceeding and warranted depending on the gravity of the offense, shall be sufficient cause for the removal or dismissal of the public official or employee even without a criminal prosecution, such provision cannot be understood as immediately warranting dismissal without due regard to the gravity of the offense.

Moreover, Section 12 of RA 6713 entrusts the primary responsibility to administer and enforce RA 6713 in the Civil Service Commission (CSC); and expressly vests in the CSC the authority to promulgate rules and regulations necessary to carry out the provisions of RA 6713. For that purpose, the CSC promulgated the *Omnibus Rules implementing Book V of Executive Order No. 292 and other pertinent Civil Service Laws*, which relevantly provide:

RULE XIV DISCIPLINE

Section 16. In the determination of penalties to be imposed, **mitigating and aggravating circumstances may be considered.** Nevertheless, in the appreciation thereof, the same must be invoked or pleaded by the proper party, otherwise, the said circumstances shall not be considered in the determination of the proper penalty to be imposed against the respondent concerned.

Section 17. If the respondent is found guilty of two or more charges or counts, the penalty imposed should be that corresponding to the most serious charge or count and the rest may be considered as aggravating circumstances.

Section 18. The imposition of the penalty shall be made in accordance with the manner herein below detailed, provided the penalty attached to the offense is divisible into minimum, and maximum, to wit:

(a) The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present;

(b) The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present or when both are present they equally offset each other;

(c) The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present;

Where aggravating and mitigating circumstances are present, the minimum of the penalty shall be applied where there are more mitigating circumstances present; the medium period if the circumstances equally offset each other; and the minimum where there are more aggravating circumstances.

xxx xxx xxx

Section 23. Administrative offenses with its corresponding penalties are classified into grave, less grave, and light depending on the gravity of its nature and effects of said acts on the government service

xxx xxx xxx

The following are less grave offenses with their corresponding penalties:

xxx xxx xxx

(i) Failure to file Sworn Statements of Assets, Liabilities and Networth, and Disclosure of Business Interest and Financial Connections including those of their spouse and unmarried children under eighteen years of age living in their households

1st offense - Suspension for one (1) month and one (1) day to six months

2nd offense- Dismissal.

The OP meted dismissal from the service on the respondent. In so doing, the OP ignored that under the implementing rules and regulations of the CSC, the failure to file the SSAL was only a **less grave offense,** which left the omission to declare certain assets in the SSAL to be not a grave offense.

As a result, there was a great disparity between the violation or offense committed by the respondent, on one hand, and the penalty imposed on him, on the other hand. We should not allow the disparity to last, for a grave injustice is committed in the name of justice when the penalty imposed is grossly disproportionate to the wrong committed.[24] The disparity is offensive to our consistent adherence to the principle that the penalty to be imposed on any erring employee must be

[24] *HSBC v. NLRC*, G.R. No. 116542, July 30, 1996, 260 SCRA 49, 56.

commensurate with the gravity of his offense.[25] As we held in *Civil Service Commission v. Ledesma*:[26]

> We stress that the law does not tolerate misconduct by a civil servant. Public service is a public trust, and whoever breaks that trust is subject to sanction. **Dismissal and forfeiture of benefits, however, are not penalties imposed for all infractions, particularly when it is a first offense. There must be substantial evidence that grave misconduct or some other grave offense meriting dismissal under the law was committed.**

It is not amiss to cite *Cavite Crusade for Good Governance v. Judge Cajigal*,[27] where the Court found the respondent presiding judge of the Regional Trial Court in Cavite guilty of violation of Section 7 of RA 3019 and Section 8 of RA 6713 for his failure to file on time his SSAL and his non-filing of his SSAL in some years. In imposing the penalty against him, the Court gave due consideration to his service in the Judiciary and to the fact that he later filed his SSAL, and *suspended* him for six months without pay but ordered him to pay a fine of ₱20,000.00, with a stern warning that a repetition of the same or similar acts would be dealt with more severely.

In fine, even assuming that the respondent failed to correctly include some assets in his SSAL, his failure did not warrant his immediate dismissal upon his first violation.

IN VIEW OF THE FOREGOING, I vote to deny the petition.

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[25] *Manila Memorial Park Cemetery, Inc. v. Delia V. Panado*, G.R. No. 154521. September 30, 2005.

[26] G.R. No. 154521, September 30, 2005, 471 SCRA 589, 611.

[27] A.M. No. RTJ-00-1562, November 23, 2001, 370 SCRA 423.

SECOND DIVISION

[G.R. No. 170414. August 25, 2010]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **PACIFIC AIRWAYS CORPORATION, ELY BUNGABONG, and MICHAEL GALVEZ,** *respondents.*

[G.R. No. 170418. August 25, 2010]

PHILIPPINE AIRLINES, INC., ROGELIO CASIÑO, and RUEL ISAAC, *petitioners, vs.* **PACIFIC AIRWAYS CORPORATION, ELY BUNGABONG and MICHAEL GALVEZ,** *respondents.*

[G.R. No. 170460. August 25, 2010]

AIR TRANSPORTATION OFFICE, DANILO ALZOLA, and ERNESTO[*] LIM, *petitioners, vs.* **PACIFIC AIRWAYS CORPORATION, ELY BUNGABONG, and MICHAEL GALVEZ,** *respondents,* **GOVERNMENT SERVICE INSURANCE SYSTEM,** *intervenor.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ONLY QUESTION OF LAW MAY BE RAISED; EXCEPTION.— In a petition for review under Rule 45, only questions of law may be raised. This rule, however, admits of certain exceptions as when the judgment of the Court of Appeals is premised on a misapprehension of facts or the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion.

2. CIVIL LAW; DAMAGES; GROSS NEGLIGENCE; DEFINED. — Gross negligence is one that is characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and

[*] "Rogelio" in some parts of the Records.

intentionally with a conscious indifference to consequences insofar as other persons may be affected.

3. ID.; ID.; PROXIMATE CAUSE; DEFINED AND CONSTRUED. — Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. In this case, the fact that PAC's pilots disregarded PAL's right of way and did not ask for updated clearance right before crossing an active runway was the proximate cause of the collision. Were it not for such gross negligence on the part of PAC's pilots, the collision would not have happened. The Civil Code provides that when a plaintiff's own negligence is the immediate and proximate cause of his injury, he cannot recover damages. Art. 2179. **When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages.** But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded. Under the law and prevailing jurisprudence, PAC and its pilots, whose own gross negligence was the immediate and proximate cause of their own injuries, must bear the cost of such injuries. They cannot recover damages.

4. ID.; ID.; ACTUAL AND COMPENSATORY; AWARD FOR THE REIMBURSEMENT THEREOF, PROPER. — We find supported by law and evidence on record PAL's counterclaim for actual or compensatory damages but only in the amount of US$548,819.93 representing lease charges during the period the Boeing 737 was not flying. The said amount cannot be claimed against the insurance policy covering the Boeing 737. In this connection, the Civil Code provides: Art. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. **If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person**

causing the loss or injury. Under the law, GSIS, as insurer subrogee of PAL's right to claim actual or compensatory damages in connection with the repair of the damaged Boeing 737, is entitled to reimbursement for the amount it advanced. GSIS claims reimbursement for the amount of US$2,775,366.84. In support of its claim, GSIS presented statements of account, check vouchers, and invoices proving payment for the repair of the Boeing 737 in the total amount of US$2,775,366.84. We find the claim fully supported by evidence on record and thus we resolve to grant the same.

5. ID.; ID.; MORAL AND EXEMPLARY; AWARDED WHEN GROSS NEGLIGENCE IS PRESENT. – Settled is the rule that the award of moral and exemplary damages as well as attorney's fees is discretionary based on the facts and circumstances of each case. The actual losses sustained by the aggrieved parties and the gravity of the injuries must be considered in arriving at reasonable levels. Understandably, Casiño and Isaac suffered sleepless nights and were temporarily unable to work after the collision. They are thus entitled to moral damages as well as exemplary damages considering that PAC's pilots acted with gross negligence. Attorney's fees are generally not recoverable except when exemplary damages are awarded as in this case. We thus deem the amounts of ₱100,000 in moral damages, ₱100,000 in exemplary damages, and ₱50,000 in attorney's fees to be in accordance with prevailing jurisprudence and appropriate given the circumstances.

APPEARANCES OF COUNSEL

GSIS Legal Services Group for GSIS.

Singson Valdez & Associates for Pacific Airways, *et al.*

Platon Martinez San Pedro & Leaño Law Offices for PAL, Casiño & Isaac.

The Government Corporate Counsel for Air Transportation Office.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court are three consolidated petitions for review[1] of the 28 October 2004 Decision[2] and the 15 November 2005 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 73214. The 28 October 2004 Decision affirmed the 27 July 2001 Decision[4] of the Regional Trial Court (Branch 112) of Pasay City. The 15 November 2005 Resolution modified the 28 October 2004 Decision of the Court of Appeals.

The Antecedent Facts

On 2 April 1996, at around 6:45 p.m., the Twin Otter aircraft of Philippine Airways Corporation (PAC) arrived at the Manila International Airport[5] from El Nido, Palawan.[6] In command of the aircraft was Ely B. Bungabong.[7] With Bungabong in the cockpit was Michael F. Galvez as co-pilot.[8]

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

[2] *Rollo* (G.R. No. 170414), pp. 11-35. Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring.

[3] *Id.* at 36-38. Penned by Associate Justice Mario L. Guarina III, with Associate Justices Roberto A. Barrios and Mariflor Punzalan Castillo, concurring.

[4] *Id.* at 155-180. Penned by Judge Manuel P. Dumatol.

[5] Now "Ninoy Aquino International Airport."

[6] Stipulation of Facts. Records, p. 1503.

[7] "Bongabong" in some parts of the Records. TSN, 6 October 1997, pp. 6-7.

[8] TSN, 6 October 1997, p. 6.

Upon touchdown, the Twin Otter taxied along the runway and proceeded to the Soriano Hangar to disembark its passengers.[9] After the last passenger disembarked, PAC's pilots started the engine of the Twin Otter in order to proceed to the PAC Hangar located at the other end of the airport.[10] At around 7:18 p.m., Galvez contacted ground control to ask for clearance to taxi to taxiway delta.[11] Rogelio Lim, ground traffic controller on duty at the Air Transportation Office (ATO), issued the clearance on condition that he be contacted again upon reaching taxiway delta intersection.[12]

PAC's pilots then proceeded to taxi to taxiway delta at about 7:19 and 19 seconds.[13] Upon reaching the intersection of taxiway delta, Galvez repeated the request to taxi to taxiway delta, which request was granted.[14] Upon reaching fox 1, Galvez requested clearance to make a right turn to fox 1 and to cross runway 13 in order to proceed to fox 1 bravo.[15] ATO granted the request.[16] At this point, the Twin Otter was still 350 meters away from runway 13.[17] Upon reaching runway 13, PAC's pilots did not make a full stop at the holding point to request clearance right before crossing runway 13.[18] Without such clearance, PAC's pilots proceeded to cross runway 13.

Meanwhile, the Philippine Airlines' (PAL) Boeing 737, manned by pilots Rogelio Casiño and Ruel Isaac, was preparing for take-off along runway 13. The PAL pilots requested clearance to push and start[19] on runway 13. Ernesto Linog, Jr., air traffic

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[9] *Id.* at 9.

[10] *Id.* at 10.

[11] *Id.* at 11.

[12] *Id.* at 12.

[13] TSN, 12 October 1998, p. 32.

[14] TSN, 6 October 1997, p. 12.

[15] *Id.*

[16] TSN, 12 October 1998, p. 33.

[17] TSN, 7 January 1999, p. 15.

[18] Records, p. 776.

[19] TSN, 12 October 1998, p. 36.

controller on duty at the ATO issued the clearance.[20] Subsequently, at 7:20 and 18 seconds, Linog, Jr. gave PAL's Boeing 737 clearance to take off.[21] Pilots Casiño and Isaac then proceeded with the take-off procedure.[22] While already on take-off roll, Casiño caught a glimpse of the Twin Otter on the left side of the Boeing 737 about to cross runway 13.[23]

While the Twin Otter was halfway through runway 13, Galvez noticed the Boeing 737 and told Bungabong that an airplane was approaching them from the right side.[24] Bungabong then said, "*Diyos ko po*" and gave full power to the Twin Otter.[25] The PAL pilots attempted to abort the take-off by reversing the thrust of the aircraft.[26] However, the Boeing 737 still collided with the Twin Otter.[27]

The Boeing 737 dragged the Twin Otter about 100 meters away.[28] When the Twin Otter stopped, PAC's pilots ran away from the aircraft for fear it might explode.[29] While observing the Twin Otter from a safe distance, they saw passengers running down from the Boeing 737.[30] When PAC's pilots returned to the aircraft to get their personal belongings, they saw that the Twin Otter was a total wreck.[31]

Q: What is this push and start clearance?
A: Push and start clearance, when the aircraft is already ready … the passenger … they have to be pushed to the starting point and start the engine.

[20] *Id.* at 36-37.

[21] *Id.* at 38.

[22] *Id.* at 37.

[23] TSN, 17 May 1999, p. 55.

[24] TSN, 6 October 1997, pp. 15-16.

[25] *Id.* at 16.

[26] TSN, 8 June 2000, pp. 17-18.

[27] TSN, 16 June 1999, pp. 4-5.

[28] TSN, 6 October 1997, p. 17.

[29] *Id*.

[30] *Id.* at 18.

[31] *Id.* at 19.

At 7:21 and 2 seconds on that fateful evening, the PAL pilots informed ATO's control tower that they had hit another aircraft, referring to the Twin Otter.[32] Bungabong suffered sprain on his shoulder while Galvez had laceration on his left thumb.[33] An ambulance brought the two pilots to Makati Medical Center where they were treated for serious and slight physical injuries.[34]

On 7 May 1996, PAC, Bungabong, and Galvez filed in the Regional Trial Court (Branch 112) of Pasay City a complaint[35] for sum of money and damages against PAL, Casiño, Isaac, ATO, Lim, Linog, Jr., and ATO's traffic control supervisor, Danilo Alzola. The Government Service Insurance System (GSIS), as insurer of the Boeing 737 that figured in the collision, intervened.

The Ruling of the Trial Court

The trial court ruled that the proximate cause of the collision was the negligence of Alzola, Lim, and Linog, Jr., as ATO's traffic control supervisor, ground traffic controller, and air traffic controller, respectively, at the time of the collision. The trial court further held that the direct cause of the collision was the negligence of Casiño and Isaac, as the pilots of the Boeing 737 that collided with the Twin Otter. The decretal portion of the trial court's decision reads:

> PREMISES CONSIDERED, judgment is hereby rendered ordering defendants Philippine Air Lines and its pilots, Rogelio Casiño and Ruel Isaac, and Air Transportation Office and its comptrollers, Danilo Alzola, Rogelio Lim and Ernesto Linog, Jr., jointly and severally, to pay:
>
> a) Plaintiff Pacific Airways Corporation the amount of Php15,000,000.00 and the further amount of Php100,000.00 a day from April 2, 1996 until it is fully reimbursed for the value of its RP-C1154 plane, as actual damages, and the amount of

[32] TSN, 12 October 1998, p. 38.

[33] TSN, 6 October 1997, pp. 19-20.

[34] *Id.* at 20.

[35] Records, pp. 1-11.

Php3,000,000.00, as exemplary damages, and the amount of Php1,000,000.00, as and for attorney's fees and expenses of litigation;

b) Plaintiffs Ely B. Bongabong[36] and Michael F. Galvez, the amount of Php5,000.00 each, as actual damages; the amount of Php500,000.00, as and for moral damages; Php500,000.00 as and for exemplary damages, and the amount of Php50,000.00, as and for attorney's fees;

c) Defendants are, likewise, ordered to pay, jointly and severally, to plaintiffs the costs of this suit.

SO ORDERED.[37]

PAL, Casiño, Isaac, GSIS, ATO, Alzola, Lim, and Linog, Jr., all appealed the trial court's Decision to the Court of Appeals.

The Ruling of the Court of Appeals

The Court of Appeals found that the trial court did not commit any reversible error. In its 28 October 2004 decision, the Court of Appeals affirmed *in toto* the decision of the trial court, thus:

WHEREFORE, the instant appeal is hereby DISMISSED. The decision of the Regional Trial Court, Branch 112, Pasay City dated July 27, 2001 is hereby AFFIRMED *in toto*.

SO ORDERED.[38]

PAL, Casiño, Isaac, GSIS, ATO, Alzola, Lim, and Linog, Jr., filed their respective motions for reconsideration. The appellate court denied for lack of merit all the motions for reconsideration except the one filed by Linog, Jr.

The Court of Appeals gave weight to the 20 March 2003 Decision[39] on appeal of the RTC (Branch 108) of Pasay City in Criminal Case No. 02-1979 acquitting Linog, Jr., who was

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[36] See note 7.

[37] Records, pp. 1495-1520.

[38] *Rollo* (G.R. No. 170414), p. 206.

[39] *Rollo* (G.R. No. 170418), pp. 144-150. Penned by Judge Priscilla C. Mijares.

convicted in the original Decision together with Alzola and Lim, of reckless imprudence resulting in damage to property with serious and slight physical injuries in connection with the collision. Since Alzola and Lim did not appeal, the judgment of conviction against them became final. Alzola and Lim were sentenced to *arresto mayor* or imprisonment for two (2) months.[40]

The Court of Appeals reasoned that since the trial court in the criminal case has ruled that Linog, Jr. was not negligent, then the act from which the civil liability might arise did not exist. In its 15 November 2005 Resolution, the Court of Appeals decreed:

> WHEREFORE, the decision subject of the motions for reconsideration is MODIFIED in that the case against defendant-appellant ERNESTO LINOG, JR. is dismissed. The decision is AFFIRMED in all other respects.
>
> SO ORDERED.[41]

Hence, the instant consolidated petitions for review.

In G.R. No. 170418, petitioners PAL, Casiño, and Isaac argue that the Court of Appeals should have applied the emergency rule instead of the last clear chance doctrine. Petitioners claim that even if the PAL pilots were negligent, PAL had exercised due diligence in the selection and supervision of its pilots. Petitioners contend that the Court of Appeals awarded damages without any specific supporting proof as required by law. Petitioners also claim that the Court of Appeals should have awarded their counterclaim for damages.

In G.R. No. 170414, petitioner GSIS points out that PAC's pilots were the ones guilty of negligence as they violated the Rules of the Air, which provide that right of way belongs to the aircraft on take-off roll and the aircraft on the right side of another. GSIS stresses that such negligence was the proximate cause of the collision. GSIS posits that PAC, Bungabong, and

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[40] *Id.* at 146.

[41] *Rollo* (G.R. No. 170414), p. 38.

Galvez should be held solidarily liable to pay GSIS the cost of repairing the insured aircraft.

In G.R. No. 170460, petitioners ATO, Alzola, and Lim call our attention to the fact that PAC was a mere lessee, not the owner of the Twin Otter. They argue that PAC, as mere lessee, was not the real party-in-interest in the complaint seeking recovery for damages sustained by the Twin Otter. Petitioners maintain that ground and air traffic clearances were the joint responsibility of ATO and the pilots-in-command. Petitioners aver that Bungabong and Galvez were negligent in asking for clearance to cross an active runway while still 350 meters away from the runway. Petitioners claim that PAL had the right of way and that PAC's pilots had the last clear chance to prevent the collision.

The Issue

The sole issue for resolution is who among the parties is liable for negligence under the circumstances.

The Court's Ruling

The petitions are meritorious.

In a petition for review under Rule 45, only questions of law may be raised. This rule, however, admits of certain exceptions as when the judgment of the Court of Appeals is premised on a misapprehension of facts or the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion.[42]

After thoroughly going over the evidence on record in this case, we are unable to sustain the finding of fact and legal conclusion of the Court of Appeals.

To ascertain who among the parties is liable for negligence, we must refer to the applicable rules governing the specific traffic management of aircrafts at an airport. The Rules of the Air[43] of the Air Transportation Office apply to all aircrafts

[42] *MEA Builders, Inc. v. Court of Appeals*, 490 Phil. 565 (2005).

[43] Formally offered by ATO as Exhibit "9".

registered in the Philippines.[44] The Boeing 737 and the Twin Otter in this case were both registered in the Philippines. Both are thus subject to the Rules of the Air. In case of danger of collision between two aircrafts, the Rules of the Air state:

> 2.2.4.7 *Surface Movement of Aircraft*. In case of danger of collision between **two aircrafts taxiing** on the maneuvering area of an aerodrome, the following shall apply:
>
> a) When two aircrafts are approaching head on, or approximately so, each shall stop or where practicable, alter its course to the right so as to keep well clear.
>
> b) **When two aircrafts are on a converging course, the one which has the other on its right shall give way**.[45] (Emphasis supplied)

In this case, however, the Boeing 737 and the Twin Otter were not both taxiing at the time of the collision. Only the Twin Otter was taxiing. The Boeing 737 was already on take-off roll. The Rules of the Air provide:

> 2.2.4.6 *Taking Off*. An aircraft taxiing on the maneuvering area of an aerodrome shall **give way to aircraft taking off or about to take off**.[46] (Emphasis supplied)

Therefore, PAL's aircraft had the right of way at the time of collision, not simply because it was on the right side of PAC's aircraft, but more significantly, because it was "**taking off or about to take off**."

PAC's Pilots

For disregarding PAL's right of way, PAC's pilots were grossly negligent. Gross negligence is one that is characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and

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[44] 1.1.1 of the Rules of the Air.

[45] Records, p. 779.

[46] *Id*.

intentionally with a conscious indifference to consequences insofar as other persons may be affected.[47]

We find it hard to believe that PAC's pilots did not see the Boeing 737 when they looked to the left and to the right before approaching the runway. It was a clear summer evening in April and the Boeing 737, only 200 meters away, had its inboard lights, outboard lights, taxi lights, and logo lights on before and during the actual take-off roll.[48] The only plausible explanation why PAC's pilots did not see the Boeing 737 was that they did not really look to the left and to the right before crossing the active runway.

Records show that PAC's pilots, while still 350 meters away, prematurely requested clearance to cross the active runway.[49] ATO points out that PAC's pilots should have made a full stop at the holding point to ask for updated clearance right before crossing the active runway.[50] Had PAC's pilots done so, ATO would by then be in a position to determine if there was an aircraft on a take-off roll at the runway. The collision would not have happened.

ATO, Alzola, Lim, and Linog, Jr.

The Rules of Air Control govern airplane traffic management and clearance at the then Manila International Airport. It contains several provisions indicating that airplane traffic management and clearance are not the sole responsibility of ATO and its traffic controllers, but of the pilots-in-command of aircrafts as well. The Rules of Air Control state:

1.3 **The pilot-in-command of an aircraft** shall, whether manipulating the controls or not, be responsible for the operation of the aircraft in accordance with the rules of the air, except that he

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[47] *Magaling v. Ong*, G.R. No. 173333, 13 August 2008, 562 SCRA 152.

[48] TSN, 17 May 1999, pp. 45-49.

[49] TSN, 7 January 1999, pp. 14-15.

[50] *Rollo* (G.R. No. 170460), ATO's Memorandum, pp. 640-641.

may depart from these rules in circumstances that render such departure absolutely necessary in the interest of safety. (Emphasis supplied)

1.5 **The pilot-in-command of an aircraft shall have final authority as to the disposition of the aircraft while he is in command**.[51] (Emphasis supplied)

3.1 **Clearances** are based solely on expediting and separating aircraft and **do not constitute authority to violate any applicable regulations for promoting safety of flight operations** or for any other purpose. (Emphasis supplied)

xxx xxx xxx

If an air traffic control clearance is not suitable to the pilot-in-command of an aircraft, he may request, and, if practicable, obtain an amended clearance. [52] (Emphasis supplied)

10.1.5 Clearances issued by controllers relate to traffic and aerodrome conditions only and **do not relieve a pilot of any responsibility whatsoever in connection with a possible violation of applicable rules and regulations**.[53] (Emphasis supplied)

Therefore, even if ATO gave both PAL's pilots and PAC's pilots clearance to take off and clearance to cross runway 13, respectively, it remained the primary responsibility of the pilots-in-command to see to it that the respective clearances given were suitable. Since the pilots-in-command have the **final authority** as to the disposition of the aircraft, they cannot, in case a collision occurs, pass the blame to ATO for issuing clearances that turn out to be unsuitable.

The clearance to cross runway 13, premature as it was, was not an absolute license for PAC's pilots to recklessly maneuver the Twin Otter across an active runway. PAC's pilots should have stopped first at the holding point to ask for clearance to cross the active runway. It was wrong for them to have relied

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[51] Records, p. 777.

[52] *Id.* at 776.

[53] *Id.* at 778.

on a prematurely requested clearance which was issued while they were still 350 meters away. Their defense, that it did not matter whether the clearance was premature or not as long as the clearance was actually granted,[54] only reveals their poor judgment and gross negligence in the performance of their duties.

On the other hand, evidence on record shows that the air traffic controller properly issued the clearance to take off to the Boeing 737. Nothing on record indicates any irregularity in the issuance of the clearance. In fact, the trial court, in the criminal case for reckless imprudence resulting in damage to property with serious and slight physical injuries in connection with the collision, ruled that air traffic controller Linog, Jr. was not negligent. The Court of Appeals, in its 15 November 2005 Resolution, absolved Linog, Jr. of civil liability for damages based on his acquittal in the criminal case.

While Alzola and Lim, as found by the trial court in the criminal case for reckless imprudence, may have been negligent in the performance of their functions, such negligence is only contributory.[55] Their contributory negligence arises from their granting the premature request of PAC's pilots for clearance to cross runway 13 while the Twin Otter was still 350 meters away from runway 13. However, as explained earlier, the granting of their premature request for clearance did not relieve PAC's pilots from complying with the Rules of the Air.

PAL's Pilots

Records show that PAL's pilots timely requested clearance to take off. Linog, Jr., ATO's air traffic controller, duly issued the clearance to take off.[56] Under the Rules of the Air, PAL's aircraft being on take-off roll undisputedly had the right of way.[57]

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[54] *Rollo* (G.R. No. 170418), p. 178. Consolidated Comment of Respondents, p. 20.

[55] *Ramos v. C.O.L. Realty Corporation*, G.R. No. 184905, 28 August 2009, 597 SCRA 526.

[56] TSN, 12 October 1998, pp. 36-37.

[57] Records, p. 779.

Further, the Rules of Air Control provide:

2.2.4.1 The aircraft that has the right of way **shall maintain its heading and speed**, x x x.[58] (Emphasis supplied)

Thus, even if Casiño noticed from the corner of his eye a small airplane taxiing on the left side and approaching halfway of fox 1,[59] it was fairly reasonable for PAL's pilots to assume that they may proceed with the take-off because the taxiing aircraft would naturally respect their right of way and not venture to cross the active runway while the Boeing 737 was on take-off roll.

Applicable by analogy is the case of *Santos v. BLTB,*[60] where the Court applied the principle that a motorist who is properly proceeding on his own side of the highway, even after he sees an approaching motorist coming toward him on the wrong side, is generally entitled to assume that the other motorist will return to his proper lane of traffic.

Proximate Cause

After assiduously studying the records of this case and carefully weighing the arguments of the parties, we are convinced that the immediate and proximate case of the collision is the gross negligence of PAC's pilots. Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.[61] In this case, the fact that PAC's pilots disregarded PAL's right of way and did not ask for updated clearance right before crossing an active runway was the proximate cause of the collision. Were it not for such gross negligence on the part of PAC's pilots, the collision would not have happened.

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[58] *Id.*

[59] TSN, 17 May 1999, pp. 60-61.

[60] 145 Phil. 422 (1970).

[61] *Ramos v. C.O.L. Realty Corporation*, *supra* note 55.

The Civil Code provides that when a plaintiff's own negligence is the immediate and proximate cause of his injury, he cannot recover damages.

> Art. 2179. **When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages.** But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded. (Emphasis supplied)

Under the law and prevailing jurisprudence,[62] PAC and its pilots, whose own gross negligence was the immediate and proximate cause of their own injuries, must bear the cost of such injuries. They cannot recover damages. Civil Case No. 96-0565 for sum of money and damages, which PAC, Bungabong, and Galvez filed against PAL, Casiño, Isaac, ATO, Alzola, Lim, and Linog, Jr. should have been dismissed for lack of legal basis.

PAL's Counterclaims

We find supported by law and evidence on record PAL's counterclaim for actual or compensatory damages but only in the amount of US$548,819.93[63] representing lease charges during the period the Boeing 737 was not flying. The said amount cannot be claimed against the insurance policy covering the Boeing 737. In this connection, the Civil Code provides:

> Art. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. **If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury**. (Emphasis supplied)

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[62] *Id*.

[63] *Rollo* (G.R. No. 170418), p. 373. Defendant's Formal Offer of Exhibits, Exhibit "29", p. 25.

Under the law, GSIS, as insurer subrogee of PAL's right to claim actual or compensatory damages in connection with the repair of the damaged Boeing 737, is entitled to reimbursement for the amount it advanced. GSIS claims reimbursement for the amount of US$2,775,366.84.[64] In support of its claim, GSIS presented statements of account, check vouchers, and invoices[65] proving payment for the repair of the Boeing 737 in the total amount of US$2,775,366.84. We find the claim fully supported by evidence on record and thus we resolve to grant the same.

With regard to PAL's other counterclaims, settled is the rule that the award of moral and exemplary damages as well as attorney's fees is discretionary based on the facts and circumstances of each case. The actual losses sustained by the aggrieved parties and the gravity of the injuries must be considered in arriving at reasonable levels.[66] Understandably, Casiño and Isaac suffered sleepless nights and were temporarily unable to work after the collision. They are thus entitled to moral damages as well as exemplary damages considering that PAC's pilots acted with gross negligence.[67] Attorney's fees are generally not recoverable except when exemplary damages are awarded[68] as in this case. We thus deem the amounts of ₱100,000 in moral damages, ₱100,000 in exemplary damages, and ₱50,000 in

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[64] *Rollo* (G.R. No. 170414), p. 723.

[65] Records, pp. 1439, 1450. Defendant's Formal Offer of Exhibits, Exhibit "24-b", p. 16.

[66] *Pleno v. Court of Appeals*, 244 Phil. 213 (1988).

[67] Article 2231 of the Civil Code provides:

Art. 2231. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.

[68] Article 2208 of the Civil Code provides:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

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attorney's fees to be in accordance with prevailing jurisprudence and appropriate given the circumstances.

WHEREFORE, we *GRANT* the petitions. We *SET ASIDE* the 28 October 2004 Decision and the 15 November 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 73214 affirming *in toto* the 27 July 2001 Decision of the Regional Trial Court (Branch 112) of Pasay City. However, we *SUSTAIN* the dismissal of the case against Ernesto Linog, Jr.

Civil Case No. 96-0565 for sum of money and damages, filed by Pacific Airways Corporation (PAC), Ely B. Bungabong, and Michael F. Galvez, is *DISMISSED* for lack of legal basis.

Pacific Airways Corporation, Ely B. Bungabong, and Michael F. Galvez are *ORDERED* to solidarily pay:

(1) Philippine Airlines, Inc. actual or compensatory damages in the amount of US$548,819.93;

(2) Rogelio Casiño and Ruel Isaac individually moral damages in the amount of ₱100,000, exemplary damages in the amount of ₱100,000, and attorney's fees in the amount of ₱50,000; and

(3) the Government Service Insurance System, as insurer subrogee of Philippine Airlines, actual or compensatory damages in the amount of US$2,775,366.84.

No pronouncement as to costs.

SO ORDERED.

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

[**] Designated additional member per Raffle dated 23 August 2010.

THIRD DIVISION

[G.R. No. 171015. August 25, 2010]

CONTINENTAL WATCHMAN AND SECURITY AGENCY, INC., *petitioner, vs.* **NATIONAL FOOD AUTHORITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; WRIT OF EXECUTION; ISSUANCE THEREOF BEFORE FINAL JUDGMENT IS VOID; APPLICATION IN CASE AT BAR.— A writ of execution may only be issued after final judgment. **Such a writ issued without final judgment is manifestly void and of no legal effect. It is as if the writ was not issued at all. Seizure of property under a void writ of execution amounts to deprivation of property without due process of law.** This Court may direct that whatever action taken under such a void writ be undone. Otherwise, we would be condoning a patent violation of a party's right to due process and allowing one party to unjustly enrich himself at the expense of another. The salaries of security guards that Continental wants to set-off are actually the subject of Continental's supplemental complaint filed in 2002. To avoid multiplicity of suits, the RTC allowed the supplemental complaint although Continental's main complaint was filed in 1993. Continental's supplemental complaint is actually a counterclaim that it asserted to defeat the return of the ₱8,445,161.00 that it had been unjustly holding since 1996. At this point, particularly *after our final and executory Decision declaring null and void the writ of execution that Judge Velasco issued*, it should appear clear to all – especially to Continental – that it has no legal basis to hold on to the ₱8,445,161.00 that resulted from the void writ of execution and the equally defective garnishment that followed. Hence, Continental is under the absolute obligation to return the garnished amount. Whether it is entitled to recover from the services it rendered to the NFA, as claimed in Civil Case No. Q-93-17139, is a matter still to be litigated before the RTC. Accordingly, we uphold the presently assailed CA ruling that sustained the RTC's order granting the issuance of

a writ of execution for the return of the ₱8,445,161.00 to the NFA.

2. **ID.; JUDGMENTS; GARNISHMENT, WHEN ILLEGAL; PAYMENT OF INTEREST, PROPER.—** We likewise order, as NFA prays for, Continental to pay interest on the ₱8,445,161.00. This interest proceeds from the illegal garnishment and undue withholding of NFA's money, and is not at all related to whatever interests and damages that may be due the parties based on the merits of the litigation now still before the RTC.

3. **ID.; ID.; IMPOSITION OF TREBLE COSTS; EXPLAINED.—** We find it appropriate, too, to impose treble costs against Continental for its claimed set-off that is plainly inappropriate to make at this time. This set-off is for the salaries of the guards who rendered services for Continental while Judge Velasco's original injunction order was in effect, and represents the very same amount claimed by Continental, in its belated supplemental complaint, that the RTC allowed nine years after the original complaint was filed. The submission before this Court of a live issue still pending before the RTC is a clear abuse of process no different in nature from the forum shopping we abhor, and one that we cannot allow a party to make without appropriate sanction. Hence, we find it in order to impose treble costs against Continental.

APPEARANCES OF COUNSEL

Rosenberg G. Palabasan for petitioner.
Department of Legal Affairs (NFA) for respondent.

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the petition for review on *certiorari* filed by Continental Watchman and Security Agency, Inc. (*Continental*), addressing the decision, dated July 29, 2005,[1]

[1] Penned by Presiding Justice Romeo A. Brawner and concurred in by Justices Edgardo P. Cruz and Jose C. Mendoza; *rollo*, pp. 29-37.

and the resolution, dated January 5, 2006,[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 86303, entitled "*Continental Watchman and Security Agency, Inc. v. Hon. Abednego O. Adre, Former Presiding Judge of Branch 88 of the Regional Trial Court of Quezon City and National Food Authority*." The CA decision and resolution denied Continental's petition for *certiorari* with prayer for temporary restraining order and/or preliminary injunction.

BACKGROUND FACTS

Continental was one of the twelve security agencies awarded contracts in 1990 to provide security services to the National Food Authority (*NFA*) under NFA Administrator Pelayo J. Gabaldon. These contracts were periodically extended as they expired.

When Romeo G. David became the NFA Administrator, he initiated a review of all the security service contracts and formulated new bidding procedures. Those who wished to provide security services to the NFA had to pre-qualify before they could join the final bidding. In May 1993, an invitation to pre-qualify and bid for the NFA's security services was published in a national newspaper and Continental was among the pre-bidding qualifiers. The final bidding, however, was suspended after the applicants, who failed to qualify, obtained a temporary restraining order that stopped the bidding process.

On July 30, 1993, the NFA wrote Continental that it no longer enjoyed its trust and confidence and that Continental had to "pull out [its] guard[s] from NFA offices, installation and warehouses by 3:00 p.m. of August 16, 1993 to allow the incoming security agency to take over the security services for NFA[.]"[3] Continental questioned the NFA's decision to terminate its contract, and filed on August 9, 1993, before the Quezon City Regional Trial Court (*RTC*), a complaint[4] against the NFA and

[2] *Id.* at 38.

[3] *Id.* at 54.

[4] *Id.* at 52-57.

NFA Administrator David for damages and injunction with prayer for the issuance of a temporary restraining order. Continental asserted in its complaint that from the tenor of the NFA's letter, security service contracts had already been awarded to other security agencies without the requisite public bidding. The case was docketed as **Civil Case No. Q-93-17139**.

RTC Judge Tirso D.C. Velasco issued a temporary restraining order and, later, a writ of preliminary injunction that the NFA challenged before the CA. In its decision[5] in CA-G.R. SP Nos. 32213, 32230, 32274, 32275, and 32276, the CA held that the writ of preliminary injunction had two parts: (1) the part that ordered NFA and its officers to cease and desist from terminating or implementing the termination of Continental's security service contracts with NFA, and (2) the part that enjoined NFA and its officers from awarding or implementing security service contracts to any other security agencies. The CA annulled the first part of the writ because it violated NFA's right to enter into lawful contracts, but upheld the second part that prevented NFA from awarding security service contracts to other security agencies without the requisite public bidding.

The NFA appealed this CA decision to this Court, and we affirmed it in *National Food Authority v. Court of Appeals*,[6] under the following *fallo*:

> IN VIEW WHEREOF, the petition is dismissed and the decision dated March 11, 1994 and resolution dated April 15, 1994 of the Court of Appeals in CA-G.R. SP Nos. 32213, 32230 and 32274-76 are affirmed. The temporary restraining order issued by this Court on May 18, 1994 is hereby lifted. Treble costs against petitioners.

Based on this decision, Continental moved for the issuance of a writ of execution[7] for ₱26.5 million as payment for the

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[5] Dated March 11, 1994, and penned by Justice Eduardo G. Montenegro and concurred in by Justices Minerva P. Gonzaga-Reyes and Lourdes K. Tayao-Jaguros; *rollo,* pp. 73-84.

[6] G.R. Nos. 115121-25, February 9, 1996, 253 SCRA 470, 482.

[7] *Rollo,* pp. 85-88.

security services rendered to the NFA during the period that it was enjoined from terminating its contract with Continental. Continental, later on, amended this amount to ₱19,803,606.98[8] and then to ₱8,445,161.00.[9]

The NFA opposed these motions because, at that time, the pre-trial and trial in Civil Case No. Q-93-17139 had yet to be held. On October 3, 1996, the RTC heard Continental's motion for execution. Continental presented a witness who testified on the amount of the security services rendered. On October 9, 1996, the RTC issued a writ of execution. The following day, October 10th, ₱8,445,161.00, from the NFA's deposit with the Philippine National Bank, was garnished.

In view of the garnishment, NFA Administrator David (later joined by the NFA) sought relief from this Court by filing a special civil action for *certiorari* to seek (1) the annulment of the October 9, 1996 order, (2) the annulment of the writ of execution issued pursuant to the October 9, 1996 order, and (3) the issuance of an order directing the RTC to conduct pre-trial and trial. The petition, entitled *David v. Velasco*,[10] cited the following jurisdictional errors:

I. Respondent judge violated the law and gravely abused his discretion and acted without jurisdiction in granting the writ of execution and issuing it in Civil Case No. Q-93-17139 when no pre-trial and no trial had been held, and no decision had been rendered in said case.

II. The respondent judge violated the law and gravely abused his discretion when he held the hearing of October 3, 1996 without notice to petitioner thus depriving him of his right to due process.

III. The respondent judge gravely abused his discretion in issuing a writ of execution for ₱8,445,161.00 based on one document testified to by one incompetent witness for services supposedly rendered after the contract for services had lapsed.

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[8] *Id.* at 89-92.

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

[10] G.R. No. 126592, October 2, 2001, 366 SCRA 360.

IV. Even assuming *arguendo*, that the order x x x was the respondent judge's decision, and the same was valid, the respondent judge violated the law and gravely abused his discretion when he immediately issued a writ of execution even before 15 days from receipt of said order had lapsed.

On January 13, 1997, we issued a temporary restraining order to enjoin the respondents in the case – Judge Tirso Velasco, Sheriff Ernesto L. Sula, and Continental – from implementing the October 9, 1996 order and writ of execution. In 2001, we declared null and void both the October 9, 1996 order and the writ of execution issued pursuant to that order. We also directed the RTC to proceed and resolve Civil Case No. Q-93-17139 with dispatch.

The NFA, based on our *David* decision, filed a motion before the RTC for the return of the garnished amount with legal interest and damages. The RTC granted this motion in its April 24, 2003 order,[11] and directed Continental to return the ₱8,445,161.00 to the NFA. Continental moved for partial reconsideration but the RTC denied the motion.

Continental sought the annulment of the April 24, 2003 order before the CA, through a petition for *certiorari* with prayer for temporary preliminary injunction and/or temporary restraining order in the case docketed as CA-G.R. No. SP-78214. The CA, on August 29, 2003, dismissed the petition because it was *procedurally flawed, at the very least.* Continental moved for the reconsideration of the dismissal, but the CA denied the motion. The decision became final on November 6, 2003, and was entered as final in due course.[12]

The NFA, based on the finality of the RTC's order of April 24, 2003, moved for execution. The RTC (presided by Judge Abednego Adre) granted the motion.[13] Continental moved for

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[11] *Rollo,* pp. 137-138.

[12] *Id.* at 271-272.

[13] Order dated April 5, 2004, *id.* at 177.

reconsideration but its motion was denied.[14] In August 2004, the RTC issued a writ of execution, and, in October 2004, it issued a notice of garnishment to the known creditors of Continental.

It was Continental's turn, at this point, to file a petition for *certiorari* with the CA. It questioned the RTC's issuance of the writ of execution, at the same time praying for a temporary restraining order and/or preliminary injunction. The case was docketed as CA-G.R. SP No. 86303. On April 12, 2005, the CA issued a temporary restraining order[15] to enjoin Judge Adre and the NFA from serving the notice of garnishment, in the main case, for a period of 60 days from receipt of the order.

On July 29, 2005, the CA handed down the decision presently before us. It denied Continental's petition and likewise denied the motion for reconsideration that followed.

Continental submits the following issues in the present petition.

ISSUES

I

WHETHER OR NOT PETITIONER HAS THE RIGHT TO SET-OFF THE SECURITY SERVICE FEE FOR THE GUARD WHO SERVED DURING THE INJUNCTION WAS VALIDLY IN EFFECT

II

WHETHER OR NOT THE COURT *A QUO* ACTED PROPERLY WHEN IT DID NOT HOLD IN ABEYANCE THE ISSUANCE OF A WRIT OF EXECUTION ON THE RETURN OF THE ILLEGALLY GARNISHED AMOUNT

THE COURT'S RULING

We find the petition unmeritorious.

Continental instituted Civil Case No. Q-93-17139, for damages and injunction, to question the NFA's decision to terminate its

[14] Order dated June 14, 2004, *id.* at 194.

[15] *Id.* at 195.

contract with the former. The complaint likewise prayed for the issuance of a temporary restraining order that the trial court granted.[16] Thus, Continental continued to provide security services to NFA. When this Court subsequently invalidated the restraining order (thus, cutting short Continental's security services to NFA), Continental filed a motion for the issuance of a writ of execution to collect the cost of security services it provided NFA while the restraining order was in effect.

The RTC granted the motion for the issuance of a writ of execution resulting in the garnishment of its bank deposit for ₱8,445,161.00. The NFA assailed this garnishment in *David*, where we held that the issuance of the writ of execution was not in order. We said:

> Clearly, the final determination of the issues in Civil Case No. Q-93-17139 was still pending when the trial court granted the motion for the issuance of a writ of execution, and issued the writ of execution itself, both dated October 9, 1996.
>
> Noteworthy, private respondent filed a motion for leave to file supplemental complaint, and a supplemental complaint on February 18, 1997, four months after the issuance of the order allowing execution and of the writ of execution itself. There is no rhyme nor reason in the filing of the two pleadings, if a final judgment that would justify the issuance of a writ of execution had already been rendered in the case.
>
> Private respondent relies on the decision of this Court in G.R. Nos. 115121-25, which affirmed the decision of the CA in CA-G.R. SP Nos. 32213, 32230, and 32274-76. However, what was decided in those cases was the propriety of the negotiated contracts entered into by the NFA with certain security agencies. Nothing in those cases settled the issues originally raised by private respondent in its complaint in Civil Case No. Q-93-17139.
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> **The issuance of the order dated October 9, 1996, and of the writ of execution also on the same date, is patently erroneous. It is without any legal basis and shows manifest ignorance on the part of public respondent judge. He did not even have any**

[16] *Id.* at 56-57.

discretion on the matter, since the trial court cannot issue a writ of execution without a final and executory judgment.

That the writ of execution had already been satisfied does not perforce clothe it with validity. As we have earlier discussed, a writ of execution may only be issued after final judgment. **Such a writ issued without final judgment is manifestly void and of no legal effect. It is as if the writ was not issued at all. Seizure of property under a void writ of execution amounts to deprivation of property without due process of law.** This Court may direct that whatever action taken under such a void writ be undone. Otherwise, we would be condoning a patent violation of a party's right to due process and allowing one party to unjustly enrich himself at the expense of another.[17]

On April 24, 2003, the RTC issued an order directing Continental to "return forthwith but not beyond thirty (30) days from notice the amount of Eight Million Four Hundred Forty-Five Thousand and One Hundred Sixty One Pesos (₱8,445,161.00) to the defendant National Food Authority."[18] This order (which Continental questioned before the CA) is the subject of the presently assailed July 29, 2005 CA decision, denying Continental's petition for *certiorari* with prayer for temporary restraining order and/or preliminary injunction. This CA decision significantly held in part that:

Continental's case mainly rests on its interpretation of the pronouncement made by the Supreme Court in the dispositive portion in G.R. No. 126592[19] cited above directing the trial court to "proceed and resolve Civil Case No. Q-93-17139 with dispatch." According to Continental, this meant that the trial court was to proceed with its hearing on the merits of the case and not the NFA's motion to return the garnished amount.

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[17] *Supra* note 10, at 369.

[18] *Rollo,* pp. 267-268.

[19] *David v. Velasco, supra* note 10.

We are satisfied that the trial court indeed committed no grave abuse of discretion in ordering the return of the amount garnished from the deposits of the NFA with the Philippine National Bank.

To reiterate, the garnishment stemmed from an order of execution that has been adjudged by the Supreme Court as patently erroneous and without any legal basis. x x x.

Hence, we find no error in the trial court's action to undo the effects of its prior erroneous and legally infirm order. x x x.

We likewise do not agree that there is any incongruity between the order to return the garnished amount and the trial court's fealty to the Supreme Court's directive to resolve the case before it with dispatch. Both issues formed part of the dispositive portion of G.R. No. 126592. Thus, the trial court's actions towards the return of the illegally garnished money and the early resolution of the case both move towards the fair dispensation of justice to all parties concerned.

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x x x Whether or not Continental is indeed entitled to the garnished amount, the subject of its supplemental complaint, is still to be settled by trial on the merits before the court *a quo*. Hence, to allow Continental to remain in possession of the garnished amount before judgment on the merits is had would amount to the deprivation of the NFA's property without due process of law.[20]

Continental now submits before us that it should be entitled to a set-off because the proceeds, from the withdrawal of the garnished amount, were used for the salaries of the guards who were assigned to the NFA sites during the period that the NFA was enjoined from terminating its security service contracts with Continental.

The salaries of security guards that Continental wants to set-off are actually the subject of Continental's supplemental complaint[21] filed in 2002. To avoid multiplicity of suits, the RTC allowed the supplemental complaint although Continental's

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[20] *Rollo,* pp. 34-37.

[21] *Id.* at 124-126.

main complaint was filed in 1993.[22] Continental's supplemental complaint is actually a counterclaim that it asserted to defeat the return of the ₱8,445,161.00 that it had been unjustly holding since 1996.

At this point, particularly *after our final and executory Decision declaring null and void the writ of execution that Judge Velasco issued*, it should appear clear to all – especially to Continental – that it has no legal basis to hold on to the ₱8,445,161.00 that resulted from the void writ of execution and the equally defective garnishment that followed. Hence, Continental is under the absolute obligation to return the garnished amount. Whether it is entitled to recover from the services it rendered to the NFA, as claimed in Civil Case No. Q-93-17139, is a matter still to be litigated before the RTC. Accordingly, we uphold the presently assailed CA ruling that sustained the RTC's order granting the issuance of a writ of execution for the return of the ₱8,445,161.00 to the NFA.

We likewise order, as NFA prays for, Continental to pay interest on the ₱8,445,161.00. This interest proceeds from the illegal garnishment and undue withholding of NFA's money, and is not at all related to whatever interests and damages that may be due the parties based on the merits of the litigation now still before the RTC.

We find it appropriate, too, to impose treble costs against Continental for its claimed set-off that is plainly inappropriate to make at this time. This set-off is for the salaries of the guards who rendered services for Continental while Judge Velasco's original injunction order was in effect, and represents the very same amount claimed by Continental, in its belated supplemental complaint, that the RTC allowed nine years after the original complaint was filed. The submission before this Court of a live issue still pending before the RTC is a clear abuse of process no different in nature from the forum shopping we abhor, and one that we cannot allow a party to make without appropriate

[22] *Id.* at 137-138.

sanction. Hence, we find it in order to impose treble costs against Continental.[23]

WHEREFORE, premises considered, we *DENY* the petition for review on *certiorari* and, accordingly, *AFFIRM WITH MODIFICATION* the Court of Appeals' decision dated July 29, 2005, and resolution dated January 5, 2006, in CA-G.R. SP No. 86303. The Regional Trial Court, Branch 88 of Quezon City is directed to immediately issue a writ of execution against Continental for the amount of ₱8,445,161.00 and interests thereon, computed at six percent per annum from the date that the NFA filed its motion to intervene in the *David* case, and at 12% per annum from the finality of this Decision.[24] Treble costs against petitioner Continental Watchman and Security Agency, Inc.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 173089. August 25, 2010]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **Hon. ENRIQUE C. ASIS, in his capacity as Presiding Judge of the Regional Trial Court of Biliran Province, Branch 16, and JAIME ABORDO,** *respondents.*

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[23] Section 3, Rule 142 of the Rules of Court: Where an action or an appeal is found to be frivolous, double, or treble costs may be imposed on the plaintiff or appellant, which shall be paid by his attorney, if so ordered by the court.

[24] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REMEDY TO QUESTION A VERDICT OF ACQUITTAL WHETHER AT THE TRIAL COURT OR AT THE APPELLATE LEVEL; CASE AT BAR.— A petition for *certiorari* under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the appellate level. In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable. The rule, however, is not without exception. In several cases, the Court has entertained petitions for *certiorari* questioning the acquittal of the accused in, or the dismissals of, criminal cases. Thus, in *People v. Louel Uy*, the Court has held: Like any other rule, however, the above said rule is not absolute. By way of exception, a judgment of acquittal in a criminal case may be assailed in **a petition for *certiorari* under Rule 65** of the Rules of Court upon clear showing by the petitioner that the lower court, in acquitting the accused, committed not merely **reversible errors of judgment** but also **grave abuse of discretion** amounting to lack or excess of jurisdiction or a **denial of due process**, thus rendering the assailed judgment void. In *People v. Laguio, Jr.*, where the acquittal of the accused was via the grant of his demurrer to evidence, We pointed out the propriety of resorting to a petition for *certiorari*. Thus: By this time, it is settled that the appellate court may review dismissal orders of trial courts granting an accused's demurrer to evidence. This may be done via the **special civil action of *certiorari* under Rule 65** based on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. Such dismissal order, being considered void judgment, does not result in jeopardy. Thus, **when the order of dismissal is annulled or set aside by an appellate court in an original special civil action via *certiorari*, the right of the accused against double jeopardy is not violated**. In this petition, the OSG claims that Abordo's acquittal in Criminal Case No. N-2213 was improper. Since appeal could not be taken without violating Abordo's constitutionally guaranteed right against double jeopardy, the OSG was correct in pursuing its cause via a petition for *certiorari* under Rule 65 before the appellate court. It was a serious error by the CA to have deprived the petitioner of its right to avail of that remedy.

2. ID.; ID.; ID.; BEREFT OF MERIT; REMAND OF THE CASE TO THE COURT OF APPEALS, NOT NECESSARY.— A review of the records, however, shows that the case need not be remanded to the CA for appropriate proceedings. The OSG's petition for *certiorari*, which forms part of the records, would not merit a favorable review even if it would be given due course simply because it is bereft of merit. For said reason, We deem that a remand of the case would only prolong the disposition of the case. It is not without precedent. "On many occasions, the Court, in the interest of public service and for the expeditious administration of justice, has resolved actions on the merits, instead of remanding them for further proceedings, as where the ends of justice would not be sub-served by the remand of the case."

3. ID.; CRIMINAL PROCEDURE; RULE ON DOUBLE JEOPARDY; EXCEPTION; RATIONALE.— The rule is that "while *certiorari* may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice." The case of *Galman v. Sandiganbayan*, presents an instructive exception to the rule on double jeopardy, that is, when the prosecution has been denied due process of law. "The rationale behind this exception is that a judgment rendered by the trial court with grave abuse of discretion was issued without jurisdiction. It is, for this reason, void. Consequently, there is no double jeopardy."

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ERRORS OF JUDGMENT CANNOT BE RAISED THEREIN.— What the OSG is questioning, therefore, are errors of judgment. This, however, cannot be resolved without violating Abordo's constitutionally guaranteed right against double jeopardy. An appellate court in a petition for *certiorari* cannot review a trial court's evaluation of the evidence and factual findings. Errors of judgment cannot be raised in a Rule 65 petition as a writ of *certiorari* can only correct errors of jurisdiction or those involving the commission of grave abuse of discretion. In the case of *People v. Hon. Tria-Tirona*, it was written: Petitioner, via a petition for review on *certiorari*, prays for the nullification and the setting aside of the decision of public respondent acquitting private respondent claiming that the former abused

her discretion in disregarding the testimonies of the NBI agents on the discovery of the illegal drugs. The petition smacks in the heart of the lower court's appreciation of the evidence of the parties. It is apparent from the decision of public respondent that she considered all the evidence adduced by the parties. Even assuming *arguendo* that public respondent may have improperly assessed the evidence on hand, what is certain is that the decision was arrived at only after all the evidence was considered, weighed and passed upon. In such a case, any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*. An error of judgment is one in which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. ***Certiorari* will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law.** Since no error of jurisdiction can be attributed to public respondent in her assessment of the evidence, *certiorari* will not lie.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Redentor C. Villordon for private respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 filed by the Office of the Solicitor General *(OSG)*, representing the State, seeking to reverse and set aside the June 7, 2006 *Resolution*[1] of the Court of Appeals *(CA)*, in CA-G.R. SP

[1] *Rollo*, pp. 59-63. Penned by Justice Apolinario D. Bruselas, Jr. and concurred in by Justices Isaias P. Dicdican and Agustin S. Dizon.

No. 01289, which dismissed outright its petition for *certiorari* under Rule 65 for being the wrong remedy.

From the records, it appears that on October 7, 2002, at 12:30 o'clock in the morning, respondent Jaime Abordo *(Abordo)* was riding his motorcycle on his way home. He was met by private complainants Kennard Majait *(Majait)*, Joeniel Calvez *(Calvez)* and Jose Montes *(Montes)*. An altercation ensued between them. Abordo shot Majait in the leg while Calvez was hit in the lower left side of his abdomen. Montes escaped unhurt.

Abordo was charged with two (2) counts of attempted murder in Criminal Case Nos. N-2212 and N-2213 and one (1) count of frustrated murder in Criminal Case No. N-2211 before the Regional Trial Court, Biliran Province, Branch 16 *(RTC)*. The trial court found no treachery and evident premeditation. Thus, in its August 29, 2005 Decision,[2] the RTC held Abordo liable only for Serious Physical Injuries for shooting Calvez and Less Serious Physical Injuries with regard to Majait. It also appreciated four (4) generic mitigating circumstances in favor of Abordo. With respect to the complaint of Montes, Abordo was acquitted.

All three complainants moved for a reconsideration regarding the civil aspect. They filed a supplemental motion to include moral damages. Calvez without the conformity of the Provincial Prosecutor, filed a notice of appeal for both the civil and the criminal aspects. For said reason, Calvez later sought withdrawal of his motion for reconsideration and its supplement.

On October 24, 2005, the trial court dismissed Majait's motion for reconsideration while Calvez's motion to withdraw was granted. On said date, the trial court also dismissed Calvez' appeal for not bearing the conformity of the Provincial Prosecutor.

Acting on Chief State Prosecutor Jovencito R. Zuno's Indorsement[3] of the October 11, 2005 letter[4] of Assistant City Prosecutor Nida C. Tabuldan-Gravino, a relative of Calvez,

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[2] RTC Decision, *Id.* at 85, 87, 90-93.

[3] *Id.* at 235.

[4] *Id.* at 236-237.

the OSG filed a petition for *certiorari* under Rule 65 before the CA based on the following grounds:

GROUNDS FOR THE ALLOWANCE
OF THE PETITION
(Petition for *Certiorari* before the CA)

I

RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PRIVATE RESPONDENT HAD NO INTENT TO KILL, IN HOLDING HIM GUILTY OF ONLY SERIOUS PHYSICAL INJURIES AND LESS SERIOUS PHYSICAL INJURIES INSTEAD OF FRUSTRATED MURDER AND ATTEMPTED MURDER IN CRIMINAL CASE NOS. N-2211 AND N-2212, RESPECTIVELY, AND IN ACQUITTING HIM OF THE CRIME CHARGED IN CRIMINAL CASE NO. N-2213.

II

RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN APPRECIATING FOUR (4) MITIGATING CIRCUMSTANCES IN FAVOR OF PRIVATE RESPONDENT.[5]

The CA, in the assailed Resolution, dismissed the petition outright. According to the appellate court, the filing of the petition for *certiorari* was the wrong remedy. As the State was questioning the verdict of acquittal and findings of lesser offenses by the trial court, the remedy should have been an appeal. Moreover, the petition for *certiorari* placed the accused in double jeopardy. Specifically, the CA wrote:

> x x x. 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 an error of law or fact – a mistake of judgment – appeal is the remedy. In view of the improper action taken by the herein petitioner, the instant petition should be dismissed.

[5] *Id.* at 238.

Moreover, Section 1, Rule 122 of the 2000 Rules of Criminal Procedure provides that any party may appeal from a judgment or final order unless the accused will be placed in double jeopardy. In the instant petition, the Solicitor General, representing the People of the Philippines is assailing the judgment of the public respondent in finding the accused guilty of lesser crimes tha[n] the ones with which he was charged and of acquitting him in another. It appears to us that the Solicitor General is also representing the interest of the private complainant Calvez when it questioned the dismissal of the latter's Notice of Appeal dated October 10, 2005 with respect to the civil aspect of the case. Although the Solicitor General is allowed to file an appeal under such rule; however, we must point out that **in filing this petition for *certiorari*, the accused is thereby placed in double jeopardy.** Such **recourse is tantamount to converting the petition for *certiorari* into an appeal**, contrary to the express injunction of the Constitution, the Rules of Court and prevailing jurisprudence on double jeopardy.

We must emphasize that the prosecution cannot appeal a decision in a criminal case whether to reverse an acquittal or to increase the penalty imposed in a conviction because it would place him in double jeopardy. Hence, **this petition is dismissible not only on the ground of wrong remedy taken by the petitioner to question an error of judgment but also on the ground that such action places the accused in double jeopardy**.[6] [emphases and underscoring supplied]

Not in conformity, the OSG comes to this Court via this petition for review under Rule 45 presenting the following:

GROUNDS RELIED UPON FOR THE ALLOWANCE OF THE PETITION

I

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING OUTRIGHT THE PETITION FOR *CERTIORARI* SEEKING TO ANNUL THE JOINT JUDGMENT DATED AUGUST 29, 2005 OF HON. ENRIQUE C. ASIS, IN HIS CAPACITY AS PRESIDING JUDGE OF THE RTC OF BILIRAN, BRANCH 16 IN CRIM. CASE NOS. N-2211, N-2212 AND N-2213

[6] *Id.* at 61-63.

WHICH WAS CLEARLY SHOWN TO BE CONTRARY TO THE EVIDENCE PRESENTED AND APPLICABLE LAW AND JURISPRUDENCE.

II

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN THEREBY AFFIRMING *IN TOTO* THE PLAINLY ERRONEOUS JUDGMENT DATED AUGUST 29, 2005 OF HON. ENRIQUE C. ASIS, AS PRESIDING JUDGE OF THE RTC OF BILIRAN PROVINCE, BRANCH 16, IN CRIM. CASE NOS. N-2211, N-2212 AND N-2213.[7]

On January 19, 2009, the petition was given due course and the parties were ordered to submit their respective memoranda. The parties complied with the order.

We find that the appellate court erred in dismissing the petition outright.

A petition for *certiorari* under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the appellate level. In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable.[8] The rule, however, is not without exception. In several cases,[9] the Court has entertained petitions for *certiorari* questioning the acquittal of the accused in, or the dismissals of, criminal cases. Thus, in *People v. Louel Uy*,[10] the Court has held:

Like any other rule, however, the above said rule is not absolute. By way of exception, a judgment of acquittal in a criminal case may

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[7] Petition, *rollo*, p. 19.

[8] *People v. CA*, 468 Phil. 1 (2004); cited in *People v. Uy*, G.R. No. 158157, September 30, 2005, 471 SCRA 668, 679-680.

[9] *Jerome Castro v. People*, G.R. No. 180832, July 23, 2008, 559 SCRA 676; *Yuchengco v. Court of Appeals*, 427 Phil. 11 (2002); and *Galman v. Sandiganbayan*, 228 Phil. 43 (1986).

[10] G.R. No. 158157, September 30, 2005, 471 SCRA 668, 680-681.

be assailed in **a petition for *certiorari* under Rule 65** of the Rules of Court upon clear showing by the petitioner that the lower court, in acquitting the accused, committed not merely **reversible errors of judgment** but also **grave abuse of discretion** amounting to lack or excess of jurisdiction or a **denial of due process**, thus rendering the assailed judgment void. [Emphases and underscoring supplied]

In *People v. Laguio, Jr.*,[11] where the acquittal of the accused was via the grant of his demurrer to evidence, We pointed out the propriety of resorting to a petition for *certiorari*. Thus:

By this time, it is settled that the appellate court may review dismissal orders of trial courts granting an accused's demurrer to evidence. This may be done via the **special civil action of *certiorari* under Rule 65** based on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. Such dismissal order, being considered void judgment, does not result in jeopardy. Thus, **when the order of dismissal is annulled or set aside by an appellate court in an original special civil action via *certiorari*, the right of the accused against double jeopardy is not violated**. [Emphases supplied]

In this petition, the OSG claims that Abordo's acquittal in Criminal Case No. N-2213 was improper. Since appeal could not be taken without violating Abordo's constitutionally guaranteed right against double jeopardy, the OSG was correct in pursuing its cause via a petition for *certiorari* under Rule 65 before the appellate court. It was a serious error by the CA to have deprived the petitioner of its right to avail of that remedy.

As the case was summarily dismissed on a technicality, the merits of the petition for *certiorari* were not at all discussed. Thus, the proper recourse would be a remand to the CA.

A review of the records, however, shows that the case need not be remanded to the CA for appropriate proceedings. The OSG's petition for *certiorari*, which forms part of the records, would not merit a favorable review even if it would be given due course simply because it is bereft of merit. For said reason, We deem that a remand of the case would only prolong the

[11] G.R. No. 128587, March 16, 2007, 518 SCRA 393, 408-409.

disposition of the case. It is not without precedent. "On many occasions, the Court, in the interest of public service and for the expeditious administration of justice, has resolved actions on the merits, instead of remanding them for further proceedings, as where the ends of justice would not be sub-served by the remand of the case."[12]

The rule is that "while *certiorari* may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice."[13] The case of *Galman v. Sandiganbayan*,[14] presents an instructive exception to the rule on double jeopardy, that is, when the prosecution has been denied due process of law. "The rationale behind this exception is that a judgment rendered by the trial court with grave abuse of discretion was issued without jurisdiction. It is, for this reason, void. Consequently, there is no double jeopardy."[15]

A reading of the OSG petition for *certiorari* filed before the CA, however, fails to show that the prosecution was deprived of its right to due process. Primarily, the OSG petition does not mention or even hint that there was a curtailment of its right. Unlike in *Galman*, the prosecution in this case was never denied its day in court. Both the prosecution and the defense were able to present their respective evidence, testimonial and documentary. Both parties had their opportunity to cross-examine witnesses and scrutinize every piece of evidence. Thereafter, the trial court exercising its discretion evaluated the evidence before it and rendered its decision. Certainly, there was no mistrial.

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[12] *Metro Eye Security, Inc. v. Salsono*, G.R. No. 167637, September 28, 2007, 534 SCRA 375, 385.

[13] *People v. Laguio*, *supra* note 11 at 408, *citing San Vicente v. People*, 441 Phil. 139 (2002).

[14] 228 Phil. 42 (1986).

[15] *Jerome Castro v. People*, *supra* note 9 at 684.

The arguments proffered in the said petition call for a review of the evidence and a recalibration of the factual findings. At the outset, the OSG faulted the trial court for giving full faith and credit to the testimonies of Abordo and his witnesses. It wrote:

> In ruling that private respondent had no intent to kill private complainants, respondent judge thus accorded full faith and credit to the testimonies of private respondent and his witnesses Julito Bernadas and Melquiades Palconit. His findings, however, are contrary to law and the evidence. Therefore, he acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[16]

It further pointed out that the CA "failed to notice certain relevant facts which, if properly considered, would justify a different conclusion."[17] Subsequently, in its memorandum, it merely reiterated the purported errors of the trial judge in appreciating and assessing the evidence of both the prosecution and the defense. Apparently, it wants a review of the trial court's judgment which it claimed to be erroneous.

The OSG then proceeded to show how the evidence should have been appreciated by the trial court in its favor and against Abordo to demonstrate that there was intent to kill on his part.

What the OSG is questioning, therefore, are errors of judgment. This, however, cannot be resolved without violating Abordo's constitutionally guaranteed right against double jeopardy. An appellate court in a petition for *certiorari* cannot review a trial court's evaluation of the evidence and factual findings. Errors of judgment cannot be raised in a Rule 65 petition as a writ of *certiorari* can only correct errors of jurisdiction or those involving the commission of grave abuse of discretion. In the case of *People v. Hon. Tria-Tirona*,[18] it was written:

> Petitioner, via a petition for review on *certiorari*, prays for the nullification and the setting aside of the decision of public respondent

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[16] OSG Petition for *Certiorari* before the CA, *rollo*, p. 252.

[17] Petition, *id.* at 26.

[18] G.R No. 130106, July 15, 2005, 463 SCRA 462, 470.

acquitting private respondent claiming that the former abused her discretion in disregarding the testimonies of the NBI agents on the discovery of the illegal drugs. The petition smacks in the heart of the lower court's appreciation of the evidence of the parties. It is apparent from the decision of public respondent that she considered all the evidence adduced by the parties. Even assuming *arguendo* that public respondent may have improperly assessed the evidence on hand, what is certain is that the decision was arrived at only after all the evidence was considered, weighed and passed upon. In such a case, any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*. An error of judgment is one in which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. ***Certiorari* will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law.** Since no error of jurisdiction can be attributed to public respondent in her assessment of the evidence, *certiorari* will not lie. [Emphasis supplied]

Summing them all up, the CA clearly erred in dismissing the petition for *certiorari* filed before it by the OSG on the ground that it was the wrong remedy. There is, however, no need for the remand of the case to the CA as the petition for *certiorari*, on its face, cannot be given due course.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The June 7, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 01289, dismissing the petition for *certiorari* for being the wrong remedy is *SET ASIDE*. Acting on the petition for *certiorari*, the Court resolves to *DENY* the same for lack of merit.

SO ORDERED.

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

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[*] Designated as additional member in lieu of Justice Antonio Eduardo B. Nachura per raffle dated January 2, 2008.

THIRD DIVISION

[G.R. No. 174084. August 25, 2010]

SPIC N' SPAN SERVICES CORPORATION, *petitioner, vs.* **GLORIA PAJE, LOLITA GOMEZ, MIRIAM CATACUTAN, ESTRELLA ZAPATA, GLORIA SUMANG, JULIET DINGAL, MYRA AMANTE, and FE S. BERNARDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION; LACK THEREOF IS ONLY A FORMAL DEFECT, NOT A JURISDICTIONAL DEFECT, AND IS NOT NECESSARILY FATAL TO A CASE.— As we previously explained in *Torres v. Specialized Packaging Development Corporation*, where only two of the 25 real parties-in-interest signed the verification, the verification by the two could be sufficient assurance that the allegations in the petition were made in good faith, are true and correct, and are not speculative. The lack of a verification in a pleading is only a formal defect, not a jurisdictional defect, and is not necessarily fatal to a case. The primary reason for requiring a verification is simply to ensure that the allegations in the pleading are done in good faith, are true and correct, and are not mere speculations.

2. ID.; EVIDENCE; TECHNICAL RULES OF EVIDENCE ARE NOT STRICTLY BINDING IN LABOR CASES.— The CA, in its assailed decision, cited *Philippine Telegraph and Telephone Corporation v. NLRC* to emphasize that in labor cases, the deciding authority should use every reasonable means to speedily and objectively ascertain the facts, without regard to technicalities of law and procedure. Technical rules of evidence are not strictly binding in labor cases.

3. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHT TO SECURITY OF TENURE; A PREFERRED CONSTITUTIONAL RIGHT THAT TECHNICAL INFIRMITIES IN LABOR PLEADINGS CANNOT DEFEAT.— We should remember, too, that certain labor rights assume preferred positions in our legal hierarchy. Under the

Constitution and the Labor Code, the State is bound to protect labor and assure the rights of workers to security of tenure. Article 4 of the Labor Code provides that all doubts in the implementation and interpretation of its provisions (including its implementing rules and regulations) shall be resolved in favor of labor. The Constitution, on the other hand, characterizes labor as a primary social economic force. The State is bound to "*protect the rights of workers and promote their welfare*," and the workers are "*entitled to security of tenure, humane conditions of work, and a living wage.*" Under these fundamental guidelines, respondents' right to security of tenure is a preferred constitutional right that technical infirmities in labor pleadings cannot defeat.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION; A NON-LAWYER MAY REPRESENT A PARTY BEFORE THE LABOR ARBITER AND THE COMMISSION; LIMITATIONS.— Our Labor Code allows a non-lawyer to represent a party before the Labor Arbiter and the Commission, but provides limitations: *Non-lawyers may appear before the Commission or any Labor Arbiter only: (1) If they represent themselves; or (2) If they represent their organization or members thereof.*

5. ID.; ID.; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; WHEN PRESUMED.— Nothing on record indicates the reason for the respondents' termination from employment, ***although the fact of termination was never disputed***. Swift denied liability on the basis of its contract with SNS. The contract was not presented before the Labor Arbiter, although Swift averred that under the contract, SNS would supply promo girls, merchandisers and other promotional personnel to handle all promotional aspects and merchandising strategy of Swift. We can assume, for lack of proof to the contrary, that the respondents' termination from employment was illegal since neither SNS nor Swift, as employers, presented any proof that their termination from employment was legal. Upon proof of termination of employment, the employer has the burden of proof that the dismissal was valid; absent this proof, the termination from employment is deemed illegal, as alleged by the dismissed employees.

6. ID.; ID.; LEGITIMATE/PERMISSIBLE JOB CONTRACTING; REQUISITES; NOT OBTAINING IN CASE AT BAR; DISCUSSED.— In order that a labor relationship can be categorized as legitimate/permissible job contracting or as prohibited labor-only contracting, the totality of the facts and the surrounding circumstances of the relationship ought to be considered. Every case is unique and has to be assessed on the basis of its facts and of the features of the relationship in question. In permissible job contracting, the principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal. The test is whether the independent contractor has contracted to do the work according to his own methods and without being subject to the principal's control except only as to the results, he has substantial capital, and he has assured the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits. The CA found SNS to be Swift's agent, and explained its ruling as follows– To be legitimate, contracting or subcontracting must satisfy the following requirements: 1) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility, according to its own manners and methods, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof; 2) the contractor or subcontractor has substantial capital or investment; and 3) the agreement between the principal and contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of right to self-organization, security of tenure, and social and welfare benefit. xxx Nowhere in the decision of both the Labor Arbiter and the NLRC shows that SNS had full control of the means and methods of the performance of their work. Moreover, as found by the Labor Arbiter, there was no evidence that SNS has substantial capital or investment. Lastly, there was no finding by the Labor Arbiter nor the NLRC that the agreement between

the principal (Swift) and contractor (SNS) assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of right to self-organization, security of tenure, and social and welfare benefit. In view of the foregoing, we conclude that the requisites above-mentioned are not obtaining in the present case. Hence, SNS is considered merely an agent of Swift which does not exempt the latter from liability. xxx We fully agree with this ruling. What we have before us, therefore, is a case of illegal dismissal perpetrated by a principal and its illegal contractor-agent.

7. CIVIL LAW; DAMAGES; NOMINAL DAMAGES; AWARD THEREOF WARRANTED IN CASE AT BAR.— [R]espondents are also entitled to nominal damages, for violation of their due process rights to notice and hearing, pursuant to our ruling in *Agabon v. NLRC*. We peg this amount at ₱30,000.00 for each of the respondents.

APPEARANCES OF COUNSEL

Noel Antonio A. Geotina for petitioner.
Public Attorney's Office for respondents.
Castro Canilao & Associates for Swift Food, Inc.

D E C I S I O N

BRION, *J.*:

Before the Court is the petition for review on *certiorari*[1] filed by Spic N' Span Services Corporation (*SNS*) to seek the reversal of the October 25, 2004 Decision[2] and the August 2, 2006 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 83215, entitled "*Gloria Paje, Lolita Gomez, Miriam Catacutan, Estrella Zapata, Gloria Sumang, Juliet Dingal, Myra Amante and Fe S. Bernardo v. National Labor Relations*

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

[2] Penned by Justice Juan Q. Enriquez, Jr., and concurred in by Justices Salvador J. Valdez, Jr. and Vicente Q. Roxas; *id.* at 29-38.

[3] *Id.* at 39-43.

Commission, Spic N Span Service Corporation and Swift Foods, Inc."

BACKGROUND FACTS

Swift Foods, Inc. (*Swift*) is a subsidiary of RFM Corporation that manufactures and processes meat products and other food products. SNS's business is to supply manpower services to its clients for a fee. Swift and SNS have a contract to promote Swift products.

Inocencio Fernandez, Edelisa F. David, Thelma Guardian, Juliet C. Dingal, Fe S. Bernardo, Lolita Gomez, Myra Amante, Miriam S. Catacutan, Gloria O. Sumang, Gloria O. Paje, and Estrella Zapata (*complainants*) worked as Deli/Promo Girls of Swift products in various supermarkets in Tarlac and Pampanga. They were all dismissed from their employment on February 28, 1998. They filed two complaints for illegal dismissal against SNS and Swift before the National Labor Relations Commission (*NLRC*) Regional Arbitration Branch III, San Fernando, Pampanga, docketed as Case Nos. 03-9131-98 and 07-9295-98. These cases were subsequently consolidated.

After two unsuccessful conciliation hearings, the Labor Arbiter ordered the parties to submit their position papers. Swift filed its position paper; SNS did not.[4] The complainants' position papers were signed by Florencio P. Peralta who was not a lawyer and who claimed to be the complainants' representative, although he never showed any proof of his authority to represent them.

In their position papers, the complainants alleged that they were employees of Swift and SNS, and their services were terminated without cause and without due process. The termination came on the day they received their notices; thus, they were denied the procedural due process requirements of notice and hearing prior to their termination of employment.[5] Swift, in its position paper, moved to dismiss the complaints on the ground that it entered into an independent labor contract

[4] *Id.* at 117.

[5] *Id.* at 46.

with SNS for the promotion of its products; it alleged that the complainants were the employees of SNS, not of Swift.[6]

The Labor Arbiter[7] found SNS to be the agent of Swift, and ordered SNS and Swift to jointly and severally pay Edelisa David ₱115,637.50 and Inocencio Fernandez ₱192,197.50, representing their retirement pay and service incentive leave pay. He dismissed, without prejudice, the claims of the other complainants because they failed to verify their position paper. He also denied all other claims for lack of factual basis.[8]

Both Swift and the complainants appealed to the NLRC. Swift filed a memorandum of appeal, while the complainants filed a partial memorandum of appeal.[9]

The NLRC denied the complainants' appeal for lack of merit.[10] It dismissed the complaint against Swift, and ordered SNS to pay Edelisa David a total of ₱256,620.13, and Inocencio Fernandez a total of ₱280,912.63, representing backwages, separation pay, and service incentive leave pay. It dismissed all other claims for lack of merit. Thereafter, Edelisa David and Inocencio Fernandez agreed to a settlement, and their cases were thus closed.[11]

The complainants whose claims were dismissed, namely, Gloria Paje, Lolita Gomez, Miriam Catacutan, Estrella Zapata, Gloria Sumang, Juliet Dingal, Myra Amante, and Fe S. Bernardo (*respondents*), moved for the reconsideration of the NLRC's ruling. This time, they were represented by the Public Attorney's Office. The NLRC denied their motion.[12]

The respondents then sought relief with the CA through a petition for *certiorari*, based on the alleged grave abuse of

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[6] *Supra* note 2, at 31-32.

[7] Fedriel S. Panganiban.

[8] *Rollo,* p. 117.

[9] *Id.* at 118.

[10] Resolution of January 11, 2002.

[11] *Rollo,* pp. 29-31.

[12] *Id.* at 119.

discretion committed by the NLRC. The CA found the petition meritorious, in its assailed decision of October 25, 2004, and ruled that the respondents' failure to sign the verification in their position paper was a formal defect that was not fatal to their case. It concluded that SNS was merely an agent of Swift; thus, the latter should not be exempt from liability. It ordered the remand of the case to the Labor Arbiter for the computation of the respondents' backwages, separation pay, and service incentive leave pay. SNS and Swift filed their motions for reconsideration which the CA denied.

SNS is now before us on a petition for review on *certiorari*, and submits the following –

I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR WHEN IT RULED THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING THE CLAIMS OF HEREIN RESPONDENTS "ON THE GROUND OF NON-SIGNING OF THE POSITION PAPER."

II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT ALTHOUGH THE RESPONDENTS WERE NOT REPRESENTED BY A LAWYER BUT BY ONE WHO IS NOT A MEMBER OF THE BAR, SAID FACT IS "SUFFICIENT JUSTIFICATION FOR THE PETITIONERS' FAILURE TO COMPLY WITH THE REQUIREMENTS OF LAW."

III. WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN "REMANDING THE CASE TO THE LABOR ARBITER FOR THE COMPUTATION OF THE MONEY CLAIMS OF THE RESPONDENTS, TO WIT: 1) BACKWAGES, 2) SEPARATION PAY, AND 3) SERVICE INCENTIVE LEAVE," DESPITE THE FACT THAT NOWHERE IN THE DECISIONS OF THE LABOR ARBITER, THE NATIONAL LABOR RELATIONS COMMISSION, AND COURT OF APPEALS IS IT STATED THAT HEREIN RESPONDENTS WERE ILLEGALLY DISMISSED."[13]

The Court's Ruling

We find the petition unmeritorious.

[13] *Id.* at 8.

SNS submits that since respondents did not sign the verification in their position paper, the CA erred when it ruled that the NLRC committed grave abuse of discretion in dismissing the respondents' complaints. SNS stressed the importance of a signature in a pleading, and harped on the respondents' failure to sign their position paper. [14] This, to SNS, is fatal to the respondents' case.

We do not agree with SNS.

As we previously explained in *Torres v. Specialized Packaging Development Corporation*,[15] where only two of the 25 real parties-in-interest signed the verification, the verification by the two could be sufficient assurance that the allegations in the petition were made in good faith, are true and correct, and are not speculative. The lack of a verification in a pleading is only a formal defect, not a jurisdictional defect, and is not necessarily fatal to a case.[16] The primary reason for requiring a verification is simply to ensure that the allegations in the pleading are done in good faith, are true and correct, and are not mere speculations.[17]

The CA, in its assailed decision, cited *Philippine Telegraph and Telephone Corporation v. NLRC*[18] to emphasize that in labor cases, the deciding authority should use every reasonable means to speedily and objectively ascertain the facts, without regard to technicalities of law and procedure. Technical rules of evidence are not strictly binding in labor cases.[19]

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[14] *Id.* at 44-50.

[15] G.R. No. 149634, July 6, 2004, 433 SCRA 455.

[16] *Ballao v. Court of Appeals*, G.R. No. 162342, October 11, 2006, 504 SCRA 227.

[17] *Robern Development Corporation v. Judge Quitain*, 373 Phil. 773 (1999), citing several cases.

[18] G.R. No. 80600, March 21, 1990, 183 SCRA 451.

[19] Labor Code, Article 221. Technical rules not binding and prior resort to amicable settlement. - In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling, and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every

In the hierarchy observed in the dispensation of justice, rules of procedure can be disregarded in order to serve the ends of justice. This was explained by Justice Bernardo P. Pardo, in *Aguam v. Court of Appeals*,[20] when he said –

> Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[21]

We should remember, too, that certain labor rights assume preferred positions in our legal hierarchy. Under the Constitution and the Labor Code, the State is bound to protect labor and assure the rights of workers to security of tenure.[22] Article 4 of the Labor Code provides that all doubts in the implementation and interpretation of its provisions (including its implementing rules and regulations) shall be resolved in favor of labor. The Constitution, on the other hand, characterizes labor as a primary social economic force. The State is bound to "*protect the rights of workers and promote their welfare*,"[23] and the workers are "*entitled to security of tenure, humane conditions of work,*

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and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.

[20] G.R. No. 137672, May 31, 2000, 332 SCRA 784.

[21] *Id.* at 789-790.

[22] Article 3, Labor Code.

[23] Article II, Section 18.

and a living wage."[24] Under these fundamental guidelines, respondents' right to security of tenure is a preferred constitutional right that technical infirmities in labor pleadings cannot defeat.

1. SNS submits that the CA committed a serious error in ruling that the respondents' representative's non-membership in the bar is sufficient justification for their failure to comply with the requirements of the law. SNS argues that this ruling *excuses the employment of a non-lawyer and places the acts of the latter on the same level as those of a member of the Bar.*[25] Our Labor Code allows a non-lawyer to represent a party before the Labor Arbiter and the Commission,[26] but provides limitations: *Non-lawyers may appear before the Commission or any Labor Arbiter only: (1) If they represent themselves; or (2) If they represent their organization or members thereof.*[27] Thus, SNS concludes that the respondents' representative had no personality to appear before the Labor Arbiter or the NLRC, and his representation for the respondents should produce no legal effect.

Our approach to these arguments is simple as the problem boils down to a balance between a technical rule and protected constitutional interests. The cited technical infirmity cannot defeat the respondents' preferred right to security of tenure which has primacy over technical requirements. Thus, we affirm the CA's ruling on this point, without prejudice to whatever action may be taken against the representative, if he had indeed been engaged in the unauthorized practice of law.

2. SNS also claims serious error on the part of the CA in remanding the case to the Labor Arbiter, for computation of the respondents' backwages, separation pay and service incentive leave pay despite the fact that nowhere in the decisions of the

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[24] Article XIII, Section 3.

[25] *Rollo*, p. 19.

[26] Article 221. – x x x In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages.

[27] Article 222.

Labor Arbiter, the NLRC, and CA was there any finding that respondents had been illegally dismissed.

We find this to be the first argument of its kind from SNS, and, in fact, is the first ever submission from SNS before it filed a motion for reconsideration with the CA. To recall, SNS did not file its position paper before the labor arbiter, nor did it file its appeal before the NLRC; only Swift and the complainants did.[28] It was only Swift, too, that filed its comment to the herein respondents' petition for *certiorari*.[29]

The records do not show if SNS filed its memorandum before the CA, although SNS filed a motion for reconsideration of the CA decision. It then claimed that the CA erred in ruling that the NLRC committed grave abuse of discretion when it dismissed respondents' claim; that a petition for *certiorari* under Rule 65 of the Rules of Court is not the proper remedy to correct the NLRC's alleged grave abuse of discretion; and that the respondents were bound by the mistakes of their non-lawyer representative.[30] Significantly, SNS did not raise the question of the CA's failure to state that the respondents had been illegally dismissed. At this point, it is too late for SNS to raise the issue.

Nothing on record indicates the reason for the respondents' termination from employment, ***although the fact of termination was never disputed***. Swift denied liability on the basis of its contract with SNS. The contract was not presented before the Labor Arbiter, although Swift averred that under the contract, SNS would supply promo girls, merchandisers and other promotional personnel to handle all promotional aspects and merchandising strategy of Swift.[31] We can assume, for lack of proof to the contrary, that the respondents' termination from employment was illegal since neither SNS nor Swift, as employers, presented any proof that their termination from

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[28] *Rollo,* p. 118.

[29] *Id.* at 120.

[30] *Ibid.*

[31] *Id.* at 122-123.

employment was legal. Upon proof of termination of employment, the employer has the burden of proof that the dismissal was valid; absent this proof, the termination from employment is deemed illegal, as alleged by the dismissed employees.

3. In order that a labor relationship can be categorized as legitimate/permissible job contracting or as prohibited labor-only contracting, the totality of the facts and the surrounding circumstances of the relationship ought to be considered.[32] Every case is unique and has to be assessed on the basis of its facts and of the features of the relationship in question. In permissible job contracting, the principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal. The test is whether the independent contractor has contracted to do the work according to his own methods and without being subject to the principal's control except only as to the results, he has substantial capital, and he has assured the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.[33]

The CA found SNS to be Swift's agent, and explained its ruling as follows[34] –

To be legitimate, contracting or subcontracting must satisfy the following requirements: 1) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility, according to its own manners and methods, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof; 2) the contractor or subcontractor has substantial capital or

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[32] *Sasan, Sr. v. National Labor Relations Commission*, G.R. No. 176240, October 17, 2008, 569 SCRA 670.

[33] Section 4(d), Rule VIII-A, Book III of the Omnibus Rules Implementing the Labor Code.

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

investment; and 3) the agreement between the principal and contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of right to self-organization, security of tenure, and social and welfare benefit (*Vinoya v. NLRC*, 324 SCRA 469).

The parties failed to attach a copy of the agreement entered into between SNS and Swift. Neither did they attach a copy of the financial statement of SNS. Thus, we are constrained to rule on the issue involved on the basis of the findings of both the Labor Arbiter and the NLRC.

The Labor Arbiter, in finding that SNS was merely a labor-only contractor, cited the following reasons: First, the agreement between SNS and Swift shows that the latter exercised control over the promo girls and/or merchandisers through the services of coordinators. Second, it cannot be said that SNS has substantial capital. Third, the duties of the petitioners were directly related, necessary and vital to the day-to-day operations of Swift. Lastly, the uniform and identification cards used by the petitioners were subject to the approval of Swift.

The NLRC, on the other hand, in finding that SNS is an independent contractor gave the following reasons: First, there is no evidence that Swift exercised the power of control over the petitioners. Rather, it is SNS who exercised direct control and supervision over the nature and performance of the works of herein petitioners. Second, by law, Swift and SNS have distinct and separate juridical personality from each other.

The decision of the NLRC is bereft of explanation as to the existence of circumstances that would make SNS an independent contractor as would exempt the "principal" from liabilities to the employees.

Nowhere in the decision of both the Labor Arbiter and the NLRC shows that SNS had full control of the means and methods of the performance of their work. Moreover, as found by the Labor Arbiter, there was no evidence that SNS has substantial capital or investment. Lastly, there was no finding by the Labor Arbiter nor the NLRC that the agreement between the principal (Swift) and contractor (SNS) assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of right to self-organization, security of tenure, and social and welfare benefit.

In view of the foregoing, we conclude that the requisites above-mentioned are not obtaining in the present case. Hence, SNS is considered merely an agent of Swift which does not exempt the latter from liability.

We note that the present decision does not affect the settlement entered into between Edeliza David and Inocencio Fernandez, on the one hand and SNS, on the other. As held by the NLRC, their complaints are considered closed and terminated.

WHEREFORE, premises considered, the instant petition is hereby GRANTED. The Resolutions of the NLRC dated January 11, 2002 and December 23, 2003 are SET ASIDE in so far as the dismissal of the petitioners' case is concerned and in so far as Swift is found not liable for the payment of the petitioners' money claims.

The present case is hereby REMANDED to the Labor Arbiter for the computation of the money claims of the petitioners, to wit: 1) Backwages; 2) Separation Pay; and 3) Service Incentive Leave Pay.

The settlement of the claims of David and Fernandez is not affected by this decision.

We fully agree with this ruling. What we have before us, therefore, is a case of illegal dismissal perpetrated by a principal and its illegal contractor-agent. Thus, we affirm the ruling of the CA with the modification that the respondents are also entitled to nominal damages, for violation of their due process rights to notice and hearing, pursuant to our ruling in *Agabon v. NLRC*.[35] We peg this amount at ₱30,000.00 for each of the respondents.

WHEREFORE, premises considered, we hereby *AFFIRM* the Court of Appeals' October 25, 2004 Decision and August 2, 2006 Resolution in CA-G.R. SP No. 83215, with the modification that nominal damages in the amount of ₱30,000.00 should additionally be paid to each of the respondents, for violation of their procedural due process rights. Costs against the petitioner.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

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[35] 485 Phil. 248 (2004).

SPECIAL SECOND DIVISION

[G.R. No. 174269. August 25, 2010]

POLO S. PANTALEON, *petitioner, vs.* **AMERICAN EXPRESS INTERNATIONAL, INC.,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; ACCESS DEVICES REGULATION ACT OF 1998 (REPUBLIC ACT NO. 8484); CREDIT CARD, DEFINED.— A credit card is defined as "any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, goods, property, labor or services or anything of value on credit."

2. CIVIL LAW; CONTRACTS; CREDIT CARD TRANSACTIONS; NATURE.— [E]very credit card transaction involves three contracts, namely: (a) the **sales contract** between the credit card holder and the merchant or the business establishment which accepted the credit card; (b) the **loan agreement** between the credit card issuer and the credit card holder; and lastly, (c) the **promise to pay** between the credit card issuer and the merchant or business establishment.

3. ID.; ID.; ID.; CREDIT CARD ISSUER – CARDHOLDER RELATIONSHIP; TWO DIVERGING VIEWS, DISCUSSED.— When a credit card company gives the holder the privilege of charging items at establishments associated with the issuer, a necessary question in a legal analysis is – when does this relationship begin? There are two diverging views on the matter. In *City Stores Co. v. Henderson,* another U.S. decision, held that: The issuance of a credit card is but an offer to extend a line of open account credit. It is unilateral and supported by no consideration. The offer may be withdrawn at any time, without prior notice, for any reason or, indeed, for no reason at all, and its withdrawal breaches no duty – for there is no duty to continue it – and violates no rights. Thus, under this view, each credit card transaction is considered a separate offer and acceptance. *Novack v. Cities Service Oil Co.* Echoed this view, with the court ruling that the mere issuance of a credit card did not create a contractual relationship with the cardholder.

On the other end of the spectrum is *Gray v. American Express Company* which recognized the card membership agreement itself as a binding contract between the credit card issuer and the card holder. Unlike in the *Novack* and the *City Stores* cases, however, the cardholder in *Gray* paid an annual fee for the privilege of being an American Express cardholder. In our jurisdiction, we generally adhere to the *Gray* ruling, recognizing the relationship between the credit card issuer and the credit card holder as a contractual one that is governed by the terms and conditions found in the card membership agreement. This contract provides the rights and liabilities of a credit card company to its cardholders and vice versa.

4. ID.; ID.; CONTRACT OF ADHESION; A CARD MEMBERSHIP AGREEMENT IS A CONTRACT OF ADHESION; ELUCIDATED.— [A] card membership agreement is a contract of adhesion as its terms are prepared solely by the credit card issuer, with the cardholder merely affixing his signature signifying his adhesion to these terms. This circumstance, however, does not render the agreement void; we have uniformly held that contracts of adhesion are "as binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely." The only effect is that the terms of the contract are construed strictly against the party who drafted it.

5. ID.; ID.; LOANS; CREDIT CARD TRANSACTIONS; USE OF CREDIT CARD IS A MERE OFFER TO ENTER INTO LOAN AGREEMENTS; DISCUSSED.— Although we recognize the existence of a relationship between the credit card issuer and the credit card holder upon the acceptance by the cardholder of the terms of the card membership agreement (customarily signified by the act of the cardholder in signing the back of the credit card), **we have to distinguish this contractual relationship from the creditor-debtor relationship which only arises *after* the credit card issuer has approved the cardholder's purchase request.** The first relates merely to an agreement providing for credit facility to the cardholder. The latter involves the actual credit on loan agreement involving three contracts, namely: the **sales contract** between the credit card holder and the merchant or the business establishment which accepted the credit card; the **loan agreement** between the credit card issuer and the credit card

holder; and the **promise to pay** between the credit card issuer and the merchant or business establishment. From the loan agreement perspective, the contractual relationship begins to exist only upon the meeting of the offer and acceptance of the parties involved. In more concrete terms, when cardholders use their credit cards to pay for their purchases, they merely offer to enter into loan agreements with the credit card company. Only after the latter approves the purchase requests that the parties enter into binding loan contracts, in keeping with Article 1319 of the Civil Code, which provides: Article 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer. This view finds support in the reservation found in the card membership agreement itself, particularly paragraph 10, which clearly states that AMEX "**reserve[s] the right to deny authorization for any requested Charge.**" By so providing, AMEX made its position clear that it has no obligation to approve any and all charge requests made by its card holders.

6. ID.; OBLIGATIONS; CULPABLE DELAY; REQUISITES; NOT ESTABLISHED IN CASE AT BAR.— Since AMEX has no obligation to approve the purchase requests of its credit cardholders, Pantaleon cannot claim that AMEX defaulted in its obligation. Article 1169 of the Civil Code, which provides the requisites to hold a debtor guilty of culpable delay, states: Article 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. x x x. The three requisites for a finding of default are: (a) that the obligation is demandable and liquidated; (b) the debtor delays performance; and (c) the creditor judicially or extrajudicially requires the debtor's performance. Based on the above, the first requisite is no longer met because AMEX, by the express terms of the credit card agreement, is not obligated to approve Pantaleon's purchase request. Without a demandable obligation, there can be no finding of default. Apart from the lack of any demandable obligation, we also find that Pantaleon failed to make the demand required by Article 1169 of the Civil Code. As previously established, the use of a credit card to pay for a purchase is only an offer to the credit card company to enter

a loan agreement with the credit card holder. **Before the credit card issuer accepts this offer, no obligation relating to the loan agreement exists between them.** On the other hand, a demand is defined as the "assertion of a legal right; xxx an asking with authority, claiming or challenging as due." **A demand presupposes the existence of an obligation between the parties**. Thus, every time that Pantaleon used his AMEX credit card to pay for his purchases, what the stores transmitted to AMEX were his offers to execute loan contracts. These obviously could not be classified as the demand required by law to make the debtor in default, given that no obligation could arise on the part of AMEX until after AMEX transmitted its acceptance of Pantaleon's offers. Pantaleon's act of "insisting on and waiting for the charge purchases to be approved by AMEX" is not the demand contemplated by Article 1169 of the Civil Code.

7. MERCANTILE LAW; ACCESS DEVICES REGULATION ACT OF 1998 (REPUBLIC ACT NO. 8484); CONTROLLING LEGISLATION THAT REGULATES THE ISSUANCE AND USE OF ACCESS DEVICES, INCLUDING CREDIT CARDS.— As the following survey of Philippine law on credit card transactions demonstrates, the State does not require credit card companies to act upon its cardholders' purchase requests within a specific period of time. Republic Act No. 8484 (*RA 8484*), or the Access Devices Regulation Act of 1998, approved on February 11, 1998, is the controlling legislation that regulates the issuance and use of access devices, including credit cards. The more salient portions of this law include the imposition of the obligation on a credit card company to disclose certain important financial information to credit card applicants, as well as a definition of the acts that constitute access device fraud.

8. ID.; BANGKO SENTRAL NG PILIPINAS (BSP); BSP CIRCULAR NO. 398; POLICY ON CREDIT CARDS.— As financial institutions engaged in the business of providing credit, credit card companies fall under the supervisory powers of the Bangko Sentral ng Pilipinas (*BSP*). BSP Circular No. 398 dated August 21, 2003 embodies the BSP's policy when it comes to credit cards – The Bangko Sentral ng Pilipinas (BSP) shall foster the development of consumer credit through innovative products such as credit cards under conditions of ***fair and***

sound consumer credit practices. The BSP likewise encourages competition and transparency to ensure more efficient delivery of services and fair dealings with customers. Based on this Circular, "x x x [b]efore issuing credit cards, banks and/or their subsidiary credit card companies must exercise proper diligence by ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments." As the above-quoted policy expressly states, the general intent is to foster "***fair and sound consumer credit practices.***" xxx In light of the foregoing, we find and so hold that AMEX is neither contractually bound nor legally obligated to act on its cardholders' purchase requests within any specific period of time, much less a period of a "matter of seconds" that Pantaleon uses as his standard. The standard therefore is implicit and, as in all contracts, must be based on fairness and reasonableness, read in relation to the Civil Code provisions on human relations, as will be discussed below.

9. CIVIL LAW; HUMAN RELATIONS; STANDARDS OF CONDUCT, ENUMERATED.— Article 19 [of the Civil Code] pervades the entire legal system and ensures that a person suffering damage in the course of another's exercise of right or performance of duty, should find himself without relief. It sets the standard for the conduct of all persons, whether artificial or natural, and requires that everyone, in the exercise of rights and the performance of obligations, must: (a) act with justice, (b) give everyone his due, and (c) observe honesty and good faith. It is not because a person invokes his rights that he can do anything, even to the prejudice and disadvantage of another.

10. ID.; ID.; ARTICLE 19 AND ARTICLE 21 OF THE CIVIL CODE; CORRELATION THEREOF, EXPLAINED; APPLICATION TO CASE AT BAR.— While Article 19 enumerates the standards of conduct, Article 21 provides the remedy for the person injured by the willful act, an action for damages. We explained how these two provisions correlate with each other in *GF Equity, Inc. v. Valenzona*: [Article 19], known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a

primordial limitation on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed. **A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible.** But while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper. In the context of a credit card relationship, although there is neither a contractual stipulation nor a specific law requiring the credit card issuer to act on the credit card holder's offer within a definite period of time, these principles provide the standard by which to judge AMEX's actions.

11. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; GOOD FAITH IS PRESUMED AND THE BURDEN OF PROVING BAD FAITH RESTS UPON THE PARTY ALLEGING IT.— It is an elementary rule in our jurisdiction that good faith is presumed and that the burden of proving bad faith rests upon the party alleging it. Although it took AMEX some time before it approved Pantaleon's three charge requests, we find no evidence to suggest that it acted with deliberate intent to cause Pantaleon any loss or injury, or acted in a manner that was contrary to morals, good customs or public policy.

12. CIVIL LAW; HUMAN RELATIONS; RIGHT TO RECOVER MORAL DAMAGES UNDER ARTICLE 21 OF THE CIVIL CODE IS BASED ON EQUITY.— [W]e said in *Garciano v. Court of Appeals* that "*the right to recover [moral damages] under Article 21 is based on equity, and he who comes to court to demand equity, must come with clean hands. Article 21 should be construed as granting the right to recover damages to injured persons who are not themselves at fault.*"

13. ID.; ID.; ID.; DOCTRINE OF *VOLENTI NON FIT INJURIA* ("TO WHICH A PERSON ASSENTS IS NOT ESTEEMED IN LAW AS INJURY"); APPLICABLE TO CASE AT BAR.—

In *Nikko Hotel Manila Garden v. Reyes*, we ruled that a person who knowingly and voluntarily exposes himself to danger cannot claim damages for the resulting injury: The doctrine of *volenti non fit injuria* ("to which a person assents is not esteemed in law as injury") refers to self-inflicted injury or to the consent to injury which precludes the recovery of damages by one who has knowingly and voluntarily exposed himself to danger, even if he is not negligent in doing so. This doctrine, in our view, is wholly applicable to this case. Pantaleon himself testified that the most basic rule when travelling in a tour group is that *you must never be a cause of any delay because the schedule is very strict*. When Pantaleon made up his mind to push through with his purchase, he must have known that the group would become annoyed and irritated with him. This was the natural, foreseeable consequence of his decision to make them all wait. We do not discount the fact that Pantaleon and his family did feel humiliated and embarrassed when they had to wait for AMEX to approve the Coster purchase in Amsterdam. We have to acknowledge, however, that Pantaleon was not a helpless victim in this scenario – at any time, he could have cancelled the sale so that the group could go on with the city tour. But he did not.

14. ID.; ID.; ID.; PRINCIPLE OF *DAMNUM ABSQUE INJURIA* (DAMAGES WITHOUT LEGAL WRONG, LOSS WITHOUT INJURY); APPLICABLE TO CASE AT BAR.— AMEX did not violate any legal duty to Pantaleon under the circumstances under the principle of *damnum absque injuria*, or damages without legal wrong, loss without injury. As we held in *BPI Express Card v. CA*: We do not dispute the findings of the lower court that private respondent suffered damages as a result of the cancellation of his credit card. However, there is a material distinction between damages and injury. Injury is the illegal invasion of a legal right; damage is the loss, hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, **there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty**. **In such cases, the consequences must be borne by the injured person alone**, the law affords no remedy for damages resulting from an act which does not amount to a legal injury or wrong. These situations are often called *damnum*

absque injuria. In other words, in order that a plaintiff may maintain an action for the injuries of which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff - a concurrence of injury to the plaintiff and legal responsibility by the person causing it. **The underlying basis for the award of tort damages is the premise that an individual was injured in contemplation of law**. Thus, there must first be a breach of some duty and the imposition of liability for that breach before damages may be awarded; and the breach of such duty should be the proximate cause of the injury.

15. ID.; DAMAGES; MORAL DAMAGES; NOT WARRANTED IN CASE AT BAR.— Because AMEX neither breached its contract with Pantaleon, nor acted with culpable delay or the willful intent to cause harm, we find the award of moral damages to Pantaleon unwarranted.

16. ID.; ID.; EXEMPLARY DAMAGES; AWARD THEREOF LACKS LEGAL BASIS.— [W]e find no basis to award exemplary damages. In contracts, exemplary damages can only be awarded if a defendant acted "in a wanton, fraudulent, reckless, oppressive or malevolent manner." The plaintiff must also show that he is entitled to moral, temperate, or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. As previously discussed, it took AMEX some time to approve Pantaleon's purchase requests because it had legitimate concerns on the amount being charged; no malicious intent was ever established here. In the absence of any other damages, the award of exemplary damages clearly lacks legal basis.

17. ID.; ID.; AWARD OF ATTORNEY'S FEES AND COSTS OF LITIGATION HAS NO BASIS.— Neither do we find any basis for the award of attorney's fees and costs of litigation. No premium should be placed on the right to litigate and not every winning party is entitled to an automatic grant of attorney's fees. To be entitled to attorney's fees and litigation costs, a party must show that he falls under one of the instances enumerated in Article 2208 of the Civil Code. This, Pantaleon failed to do. Since we eliminated the award of moral and exemplary damages, so must we delete the award for attorney's fees and litigation expenses.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioner.
Sycip Salazar Hernandez & Gatmaitan for respondent.

R E S O L U T I O N

BRION, *J.*:

We resolve the motion for reconsideration filed by respondent American Express International, Inc. (*AMEX*) dated June 8, 2009,[1] seeking to reverse our Decision dated May 8, 2009 where we ruled that AMEX was guilty of culpable delay in fulfilling its obligation to its cardholder –petitioner Polo Pantaleon. Based on this conclusion, we held AMEX liable for moral and exemplary damages, as well as attorney's fees and costs of litigation.[2]

FACTUAL ANTECEDENTS

The established antecedents of the case are narrated below.

AMEX is a resident foreign corporation engaged in the business of providing credit services through the operation of a charge card system. Pantaleon has been an AMEX cardholder since 1980.[3]

In October 1991, Pantaleon, together with his wife (*Julialinda*), daughter (*Regina*), and son (*Adrian Roberto*), went on a guided European tour. On October 25, 1991, the tour group arrived in Amsterdam. Due to their late arrival, they postponed the tour of the city for the following day.[4]

The next day, the group began their sightseeing at around 8:50 a.m. with a trip to the Coster Diamond House (*Coster*). To have enough time to take a guided city tour of Amsterdam

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[1] *Rollo*, pp. 1504-1514.

[2] *Id.* at 1488-1503.

[3] *Id.* at 14-15.

[4] *Id.* at 735-736.

before their departure scheduled on that day, **the tour group planned to leave Coster by 9:30 a.m. at the latest**.

While at Coster, Mrs. Pantaleon decided to purchase some diamond pieces worth a total of US$13,826.00. Pantaleon presented his American Express credit card to the sales clerk to pay for this purchase. He did this at around 9:15 a.m. The sales clerk swiped the credit card and asked Pantaleon to sign the charge slip, which was then electronically referred to AMEX's Amsterdam office at 9:20 a.m.[5]

At around 9:40 a.m., Coster had not received approval from AMEX for the purchase so Pantaleon asked the store clerk to cancel the sale. The store manager, however, convinced Pantaleon to wait a few more minutes. Subsequently, the store manager informed Pantaleon that AMEX was asking for bank references; Pantaleon responded by giving the names of his Philippine depository banks.

At around 10 a.m., or 45 minutes after Pantaleon presented his credit card, AMEX still had not approved the purchase. Since the city tour could not begin until the Pantaleons were onboard the tour bus, Coster decided to release at around 10:05 a.m. the purchased items to Pantaleon even without AMEX's approval.

When the Pantaleons finally returned to the tour bus, they found their travel companions visibly irritated. This irritation intensified when the tour guide announced that they would have to cancel the tour because of lack of time as they all had to be in Calais, Belgium by 3 p.m. to catch the ferry to London.[6]

From the records, it appears that after Pantaleon's purchase was transmitted for approval to AMEX's Amsterdam office at 9:20 a.m.; was referred to AMEX's Manila office at 9:33 a.m.; and was approved by the Manila office at 10:19 a.m. At 10:38 a.m., AMEX's Manila office finally transmitted the Approval Code to AMEX's Amsterdam office. In all, **it took AMEX a**

[5] *Id.* at 739-749.

[6] *Id.* at 20-21.

total of 78 minutes to approve Pantaleon's purchase and to transmit the approval to the jewelry store.[7]

After the trip to Europe, the Pantaleon family proceeded to the United States. Again, Pantaleon experienced delay in securing approval for purchases using his American Express credit card on two separate occasions. He experienced the first delay when he wanted to purchase golf equipment in the amount of US$1,475.00 at the Richard Metz Golf Studio in New York on October 30, 1991. Another delay occurred when he wanted to purchase children's shoes worth US$87.00 at the Quiency Market in Boston on November 3, 1991.

Upon return to Manila, Pantaleon sent AMEX a letter demanding an apology for the humiliation and inconvenience he and his family experienced due to the delays in obtaining approval for his credit card purchases. AMEX responded by explaining that the delay in Amsterdam was due to the amount involved – the charged purchase of US$13,826.00 deviated from **Pantaleon's established charge purchase pattern**. Dissatisfied with this explanation, Pantaleon filed an action for damages against the credit card company with the Makati City Regional Trial Court (*RTC*).

On August 5, 1996, the RTC found AMEX guilty of delay, and awarded Pantaleon ₱500,000.00 as moral damages, ₱300,000.00 as exemplary damages, ₱100,000.00 as attorney's fees, and ₱85,233.01 as litigation expenses.

On appeal, the CA reversed the awards.[8] While the CA recognized that delay in the nature of *mora accipiendi* or creditor's default attended AMEX's approval of Pantaleon's purchases, it disagreed with the RTC's finding that AMEX had breached its contract, noting that the delay was not attended by bad faith, malice or gross negligence. The appellate court found that AMEX exercised diligent efforts to effect the approval of Pantaleon's

[7] *Id.*, citing defendant's Exhibit "9-G", "9-H", and "9-I".

[8] In a decision dated August 18, 2006 penned by Associate Justice E. J. Asuncion, with the concurrence of Associate Justices J. Mendoza and A. Tayag.

purchases; the purchase at Coster posed particularly a problem because it was at variance with Pantaleon's established charge pattern. As there was no proof that AMEX breached its contract, or that it acted in a wanton, fraudulent or malevolent manner, the appellate court ruled that AMEX could not be held liable for any form of damages.

Pantaleon questioned this decision *via* a petition for review on *certiorari* with this Court.

In our May 8, 2009 decision, we reversed the appellate court's decision and held that AMEX was guilty of *mora solvendi*, or debtor's default. AMEX, as debtor, had an obligation as the credit provider to act on Pantaleon's purchase requests, whether to approve or disapprove them, with "timely dispatch." Based on the evidence on record, we found that AMEX failed to timely act on Pantaleon's purchases.

Based on the testimony of AMEX's credit authorizer Edgardo Jaurique, the approval time for credit card charges would be three to four seconds under regular circumstances. In Pantaleon's case, it took AMEX 78 minutes to approve the Amsterdam purchase. We attributed this delay to AMEX's Manila credit authorizer, Edgardo Jaurique, who had to go over Pantaleon's past credit history, his payment record and his credit and bank references before he approved the purchase. Finding this delay unwarranted, we reinstated the RTC decision and awarded Pantaleon moral and exemplary damages, as well as attorney's fees and costs of litigation.

THE MOTION FOR RECONSIDERATION

In its motion for reconsideration, AMEX argues that this Court erred when it found AMEX guilty of culpable delay in complying with its obligation to act with timely dispatch on Pantaleon's purchases. While AMEX admits that it normally takes seconds to approve charge purchases, it emphasizes that Pantaleon experienced delay in Amsterdam because his transaction was not a normal one. To recall, Pantaleon sought to charge in a **single transaction** jewelry items purchased from Coster in

the total amount of US$13,826.00 or ₱383,746.16. While the total amount of Pantaleon's previous purchases using his AMEX credit card did exceed US$13,826.00, AMEX points out that these purchases were made in a span of more than 10 years, not in a single transaction.

Because this was the biggest single transaction that Pantaleon ever made using his AMEX credit card, AMEX argues that the transaction necessarily required the credit authorizer to carefully review Pantaleon's credit history and bank references. AMEX maintains that it did this not only to ensure Pantaleon's protection (to minimize the possibility that a third party was fraudulently using his credit card), but also to protect itself from the risk that Pantaleon might not be able to pay for his purchases on credit. This careful review, according to AMEX, is also in keeping with the extraordinary degree of diligence required of banks in handling its transactions. AMEX concluded that in these lights, the thorough review of Pantaleon's credit record was motivated by legitimate concerns and could not be evidence of any ill will, fraud, or negligence by AMEX.

AMEX further points out that the proximate cause of Pantaleon's humiliation and embarrassment was his own decision to proceed with the purchase despite his awareness that the tour group was waiting for him and his wife. Pantaleon could have prevented the humiliation had he cancelled the sale when he noticed that the credit approval for the Coster purchase was unusually delayed.

In his Comment dated February 24, 2010, Pantaleon maintains that AMEX was guilty of *mora solvendi*, or delay on the part of the debtor, in complying with its obligation to him. Based on jurisprudence, a just cause for delay does not relieve the debtor in delay from the consequences of delay; thus, even if AMEX had a justifiable reason for the delay, this reason would not relieve it from the liability arising from its failure to timely act on Pantaleon's purchase.

In response to AMEX's assertion that the delay was in keeping with its duty to perform its obligation with extraordinary diligence,

Pantaleon claims that this duty includes the timely or prompt performance of its obligation.

As to AMEX's contention that moral or exemplary damages cannot be awarded absent a finding of malice, Pantaleon argues that evil motive or design is not always necessary to support a finding of bad faith; gross negligence or wanton disregard of contractual obligations is sufficient basis for the award of moral and exemplary damages.

OUR RULING

We GRANT the motion for reconsideration.

Brief historical background

A credit card is defined as "any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, goods, property, labor or services or anything of value on credit."[9] It traces its roots to the charge card first introduced by the Diners Club in New York City in 1950.[10] American Express followed suit by introducing its own charge card to the American market in 1958.[11]

In the Philippines, the now defunct Pacific Bank was responsible for bringing the first credit card into the country in the 1970s.[12] However, it was only in the early 2000s that credit card use gained wide acceptance in the country, as evidenced by the surge in the number of credit card holders then.[13]

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[9] Section 3(f), Republic Act 8484.

[10] See M.J. Stephey, A Brief History of: Credit Cards, TIME Magazine, April 23, 2009, http://www.time.com/time/magazine/article/0,9171,1893507,00.html

[11] http://home3.americanexpress.com/corp/os/history.asp

[12] See Advice on Wise Credit Card Use and Money Management, Business Section of the February 9, 2009 issue of the Philippine Star, http://www.philstar.com/Article.aspx?articleid=438524

[13] http://www.economywatch.com/credit-card/international/philippines-credit-cards.html

Nature of Credit Card Transactions

To better understand the dynamics involved in credit card transactions, we turn to the United States case of *Harris Trust & Savings Bank v. McCray*[14] which explains:

> The bank credit card system involves a tripartite relationship between the issuer bank, the cardholder, and merchants participating in the system. The issuer bank establishes an account on behalf of the person to whom the card is issued, and the two parties enter into an agreement which governs their relationship. This agreement provides that the bank will pay for cardholder's account the amount of merchandise or services purchased through the use of the credit card and will also make cash loans available to the cardholder. It also states that the cardholder shall be liable to the bank for advances and payments made by the bank and that the cardholder's obligation to pay the bank shall not be affected or impaired by any dispute, claim, or demand by the cardholder with respect to any merchandise or service purchased.
>
> The merchants participating in the system agree to honor the bank's credit cards. The bank irrevocably agrees to honor and pay the sales slips presented by the merchant if the merchant performs his undertakings such as checking the list of revoked cards before accepting the card. x x x.
>
> These slips are forwarded to the member bank which originally issued the card. The cardholder receives a statement from the bank periodically and may then decide whether to make payment to the bank in full within a specified period, free of interest, or to defer payment and ultimately incur an interest charge.

We adopted a similar view in *CIR v. American Express International, Inc. (Philippine branch),*[15] where we also recognized that credit card issuers are not limited to banks. We said:

> Under RA 8484, the credit card that is issued by banks in general, or by non-banks in particular, refers to "any card x x x or other credit device existing for the purpose of obtaining x x x goods

[14] 21 Ill.App.3d 605, 316 N.E.2d 209 (1974).

[15] G.R. No. 152609, June 29, 2005, 462 SCRA 197.

x x x or services x x x on credit"; and is being used "usually on a revolving basis." This means that the consumer-credit arrangement that exists between the issuer and the holder of the credit card enables the latter to procure goods or services "on a continuing basis as long as the outstanding balance does not exceed a specified limit." The card holder is, therefore, given "the power to obtain present control of goods or service on a promise to pay for them in the future."

Business establishments may extend credit sales through the use of the credit card facilities of a non-bank credit card company to avoid the risk of uncollectible accounts from their customers. Under this system, the establishments do not deposit in their bank accounts the credit card drafts that arise from the credit sales. Instead, they merely record their receivables from the credit card company and periodically send the drafts evidencing those receivables to the latter.

The credit card company, in turn, sends checks as payment to these business establishments, but it does not redeem the drafts at full price. The agreement between them usually provides for discounts to be taken by the company upon its redemption of the drafts. At the end of each month, it then bills its credit card holders for their respective drafts redeemed during the previous month. If the holders fail to pay the amounts owed, the company sustains the loss.

Simply put, every credit card transaction involves three contracts, namely: (a) the **sales contract** between the credit card holder and the merchant or the business establishment which accepted the credit card; (b) the **loan agreement** between the credit card issuer and the credit card holder; and lastly, (c) the **promise to pay** between the credit card issuer and the merchant or business establishment.[16]

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[16] In *Presta Oil, Inc. v. Van Waters & Rogers Corporation*, the court characterized the nature of this last contract, thus:

Credit cards are more automatic in their operation than checks or notes, but courts which have examined whether a credit card is legal tender have concluded that it is not. Instead, these courts held that the debt incurred in a credit card transaction is discharged when the merchant receives payment from the card issuer. 276 F.Supp.2d 1128, (2003) citing *Porter v. City of Atlanta,* 259 Ga. 526, 384 S.E.2d 631, 634 (1989), *cert denied* *1137 494 U.S. 1004, 110 S.Ct. 1297, 108 L.Ed.2d 474 (1990); *Berry v. Hannigan*, 7 Cal.App.4th 587, 9 Cal.Rptr.2d 213, 215 (1992), *rev. denied* Sept. 02, 1992;

Credit card issuer – cardholder relationship

When a credit card company gives the holder the privilege of charging items at establishments associated with the issuer,[17] a necessary question in a legal analysis is – when does this relationship begin? There are two diverging views on the matter. In *City Stores Co. v. Henderson*,[18] another U.S. decision, held that:

> The issuance of a credit card is but an offer to extend a line of open account credit. It is unilateral and supported by no consideration. The offer may be withdrawn at any time, without prior notice, for any reason or, indeed, for no reason at all, and its withdrawal breaches no duty – for there is no duty to continue it – and violates no rights.

Thus, under this view, each credit card transaction is considered a separate offer and acceptance.

Novack v. Cities Service Oil Co.[19] echoed this view, with the court ruling that the mere issuance of a credit card did not create a contractual relationship with the cardholder.

On the other end of the spectrum is *Gray v. American Express Company*[20] which recognized the card membership agreement itself as a binding contract between the credit card issuer and the card holder. Unlike in the *Novack* and the *City Stores* cases, however, the cardholder in *Gray* paid an annual fee for the privilege of being an American Express cardholder.

In our jurisdiction, we generally adhere to the *Gray* ruling, recognizing the relationship between the credit card issuer and

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Cade v. Montgomery Co., 83 Md.App. 419, 575 A.2d 744, 749 (1990), *rev. denied* Aug. 30, 1990, *cert denied* 498 U.S. 1085, 111 S.Ct. 960, 112 L.Ed.2d 1047 (1991).

[17] *Katz v. Carte Blanche Corp*., 496 F.2d 747 (3d Cir. 1974).

[18] 116 Ga.App. 114, 156 S.E.2d 818 (1967).

[19] 149 NJ Super 542, 374 A.2d 89 (1977), aff'd, 159 NJ Super. 400, 388 A.2d 264 (1978).

[20] 743 F.2d 10, 240 US.App.D.C. 10 (1984).

the credit card holder as a contractual one that is governed by the terms and conditions found in the card membership agreement.[21] This contract provides the rights and liabilities of a credit card company to its cardholders and vice versa.

We note that a card membership agreement is a contract of adhesion as its terms are prepared solely by the credit card issuer, with the cardholder merely affixing his signature signifying his adhesion to these terms.[22] This circumstance, however, does not render the agreement void; we have uniformly held that contracts of adhesion are "as binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely."[23] The only effect is that the terms of the contract are construed strictly against the party who drafted it.[24]

On AMEX's obligations to Pantaleon

We begin by identifying the two privileges that Pantaleon assumes he is entitled to with the issuance of his AMEX credit card, and on which he anchors his claims. First, Pantaleon presumes that since his credit card has no pre-set spending limit, AMEX has the obligation to approve all his charge requests. Conversely, even if AMEX has no such obligation, at the very least it is obliged to act on his charge requests within a specific period of time.

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[21] See *BPI Express v. CA*, G.R. No. 120639, September 25, 1998; *Aznar v. Citibank*, G.R. No. 164273, March 28, 2007*; Sps. Ermitano v. CA*, G.R. No. 127246, April 21, 1999; *Acol v. Philippine Commercial Credit Card Incorporation*,G.R. No. 135149, July 25, 2006; *Equitable Banking Corporation v. Calderon*, G.R. No. 156168, December 14, 2004; *Bankard v. Feliciano*, G.R. No. 141761, July 28, 2006.

[22] See *BPI Express Card Corp. v. Olalia*, 423 Phil. 593, 599 (2001).

[23] *Polotan, Sr. vs. Court of Appeals*, 296 SCRA 247, 255 [1998].

[24] *Palmares vs. Court of Appeals*, G.R. No. 126490, 288 SCRA 422, 433 (1998), citing *Philippine Airlines vs. Court of Appeals, et al.*, G.R. No. 119706, 255 SCRA 48, 58 (1996).

i. Use of credit card a mere offer to enter into loan agreements

Although we recognize the existence of a relationship between the credit card issuer and the credit card holder upon the acceptance by the cardholder of the terms of the card membership agreement (customarily signified by the act of the cardholder in signing the back of the credit card), **we have to distinguish this contractual relationship from the creditor-debtor relationship which only arises *after* the credit card issuer has approved the cardholder's purchase request.** The first relates merely to an agreement providing for credit facility to the cardholder. The latter involves the actual credit on loan agreement involving three contracts, namely: the **sales contract** between the credit card holder and the merchant or the business establishment which accepted the credit card; the **loan agreement** between the credit card issuer and the credit card holder; and the **promise to pay** between the credit card issuer and the merchant or business establishment.

From the loan agreement perspective, the contractual relationship begins to exist only upon the meeting of the offer[25] and acceptance of the parties involved. In more concrete terms, when cardholders use their credit cards to pay for their purchases, they merely offer to enter into loan agreements with the credit card company. Only after the latter approves the purchase requests that the parties enter into binding loan contracts, in keeping with Article 1319 of the Civil Code, which provides:

> Article 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.

This view finds support in the reservation found in the card membership agreement itself, particularly paragraph 10, which clearly states that AMEX "**reserve[s] the right to deny**

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[25] An offer is defined as "a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *Black's Law Dictionary*, 5th edition, p. 976.

authorization for any requested Charge." By so providing, AMEX made its position clear that it has no obligation to approve any and all charge requests made by its card holders.

ii. AMEX not guilty of culpable delay

Since AMEX has no obligation to approve the purchase requests of its credit cardholders, Pantaleon cannot claim that AMEX defaulted in its obligation. Article 1169 of the Civil Code, which provides the requisites to hold a debtor guilty of culpable delay, states:

> Article 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. x x x.

The three requisites for a finding of default are: (a) that the obligation is demandable and liquidated; (b) the debtor delays performance; and (c) the creditor judicially or extrajudicially requires the debtor's performance.[26]

Based on the above, the first requisite is no longer met because AMEX, by the express terms of the credit card agreement, is not obligated to approve Pantaleon's purchase request. Without a demandable obligation, there can be no finding of default.

Apart from the lack of any demandable obligation, we also find that Pantaleon failed to make the demand required by Article 1169 of the Civil Code.

As previously established, the use of a credit card to pay for a purchase is only an offer to the credit card company to enter a loan agreement with the credit card holder. **Before the credit card issuer accepts this offer, no obligation relating to the loan agreement exists between them.** On the other hand, a demand is defined as the "assertion of a legal right; xxx an asking with authority, claiming or challenging as due."[27] **A demand presupposes the existence of an obligation between the parties**.

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[26] See *Selegna Management and Development Corporation v. UCPB*, G.R. No. 165662, May 3, 2006.

[27] *Black's Law Dictionary*, 5th ed., p. 386.

Thus, every time that Pantaleon used his AMEX credit card to pay for his purchases, what the stores transmitted to AMEX were his offers to execute loan contracts. These obviously could not be classified as the demand required by law to make the debtor in default, given that no obligation could arise on the part of AMEX until after AMEX transmitted its acceptance of Pantaleon's offers. Pantaleon's act of "insisting on and waiting for the charge purchases to be approved by AMEX"[28] is not the demand contemplated by Article 1169 of the Civil Code.

For failing to comply with the requisites of Article 1169, Pantaleon's charge that AMEX is guilty of culpable delay in approving his purchase requests must fail.

iii. On AMEX's obligation to act on the offer within a specific period of time

Even assuming that AMEX had the right to review his credit card history before it approved his purchase requests, Pantaleon insists that AMEX had an obligation to act on his purchase requests, either to approve or deny, in "a matter of seconds" or "in timely dispatch." Pantaleon impresses upon us the existence of this obligation by emphasizing two points: (a) his card has no pre-set spending limit; and (b) in his twelve years of using his AMEX card, AMEX had always approved his charges in a matter of seconds.

Pantaleon's assertions fail to convince us.

We originally held that AMEX was in culpable delay when it acted on the Coster transaction, as well as the two other transactions in the United States which took AMEX approximately 15 to 20 minutes to approve. This conclusion appears valid and reasonable at first glance, comparing the time it took to finally get the Coster purchase approved (a total of 78 minutes), to AMEX's "normal" approval time of three to four seconds (based on the testimony of Edgardo Jaurigue, as well as Pantaleon's previous experience). We come to a different result, however, after a closer look at the factual and legal circumstances of the case.

[28] *Rollo*, p. 1429.

AMEX's credit authorizer, Edgardo Jaurigue, explained that having no pre-set spending limit in a credit card simply means that the charges made by the cardholder are approved based on his ability to pay, as demonstrated by his past spending, payment patterns, and personal resources.[29] Nevertheless, **every time Pantaleon charges a purchase on his credit card, the credit card company still has to determine whether it will allow this charge, based on his past credit history**. This right to review a card holder's credit history, although not specifically set out in the card membership agreement, is a necessary implication of AMEX's right to deny authorization for any requested charge.

As for Pantaleon's previous experiences with AMEX (*i.e.*, that in the past 12 years, AMEX has always approved his charge requests in three or four seconds), this record does not establish that Pantaleon had a legally enforceable obligation to expect AMEX to act on his charge requests within a matter of seconds. For one, Pantaleon failed to present any evidence to support his assertion that AMEX acted on purchase requests in a matter of three or four seconds as an established practice. More importantly, even if Pantaleon did prove that AMEX, as a matter of practice or custom, acted on its customers' purchase requests in a matter of seconds, this would still not be enough to establish a legally demandable right; as a general rule, a practice or custom is not a source of a legally demandable or enforceable right.[30]

We next examine the credit card membership agreement, the contract that primarily governs the relationship between AMEX and Pantaleon. Significantly, **there is no provision in this agreement that obligates AMEX to act on all cardholder purchase requests within a specifically defined period of time**. Thus, regardless of whether the obligation is worded was to "act in a matter of seconds" or to "act in timely dispatch," the fact remains that no obligation exists on the part of AMEX to act within a specific period of time. Even Pantaleon admits

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[29] *Id.* at 210.

[30] See *Makati Stock Exchange, Inc. v. Campos*, G.R. No. 138814, April 16, 2009.

in his testimony that he could not recall any provision in the Agreement that guaranteed AMEX's approval of his charge requests within a matter of minutes.[31]

Nor can Pantaleon look to the law or government issuances as the source of AMEX's alleged obligation to act upon his credit card purchases within a matter of seconds. As the following survey of Philippine law on credit card transactions demonstrates, the State does not require credit card companies to act upon its cardholders' purchase requests within a specific period of time.

Republic Act No. 8484 (*RA 8484*), or the Access Devices Regulation Act of 1998, approved on February 11, 1998, is the controlling legislation that regulates the issuance and use of access devices,[32] including credit cards. The more salient portions of this law include the imposition of the obligation on a credit card company to disclose certain important financial information[33] to credit card applicants, as well as a definition of the acts that constitute access device fraud.

As financial institutions engaged in the business of providing credit, credit card companies fall under the supervisory powers of the Bangko Sentral ng Pilipinas (*BSP*).[34] BSP Circular

[31] RTC records, p. 893-894.

[32] Defined in Section 3 of RA 8484 as "any card, plate, code, account number, electronic serial number, personal identification number, or other telecommunications service, equipment, or instrumental identifier, or other means of account access that can be used to obtain money, goods, services, or any other thing of value or to initiate a transfer of funds (other than a transfer originated solely by paper instrument)."

[33] Credit card companies are required to provide information on the annual interest rates on the amount of credit obtained by the card holder, the annual membership fees, if any, the manner by which all charges and fees are computed, among others.

[34] Section 3 of Republic Act No. 7653, or the New Central Bank Act, provides:

Section 3. *Responsibility and Primary Objective.* - The Bangko Sentral shall provide policy directions in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as provided in this Act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-

No. 398 dated August 21, 2003 embodies the BSP's policy when it comes to credit cards –

> The Bangko Sentral ng Pilipinas (BSP) shall foster the development of consumer credit through innovative products such as credit cards under conditions of ***fair and sound consumer credit practices***. The BSP likewise encourages competition and transparency to ensure more efficient delivery of services and fair dealings with customers. (Emphasis supplied)

Based on this Circular, "x x x [b]efore issuing credit cards, banks and/or their subsidiary credit card companies must exercise proper diligence by ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments."[35] As the above-quoted policy expressly states, the general intent is to foster "***fair and sound consumer credit practices.***"

Other than BSP Circular No. 398, a related circular is BSP Circular No. 454, issued on September 24, 2004, but this circular merely enumerates the unfair collection practices of credit card companies – a matter not relevant to the issue at hand.

In light of the foregoing, we find and so hold that AMEX is neither contractually bound nor legally obligated to act on its cardholders' purchase requests within any specific period of time, much less a period of a "matter of seconds" that Pantaleon uses as his standard. The standard therefore is implicit and, as in all contracts, must be based on fairness and reasonableness, read in relation to the Civil Code provisions on human relations, as will be discussed below.

AMEX acted with good faith

Thus far, we have already established that: (a) AMEX had neither a contractual nor a legal obligation to act upon Pantaleon's

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banking functions, hereafter referred to as quasi-banks, and institutions performing similar functions.

The primary objective of the Bangko Sentral is to maintain price stability conducive to a balanced and sustainable growth of the economy. It shall also promote and maintain monetary stability and the convertibility of the peso.

[35] Subsections X320.3 and 4301N.3 of BSP Circular No. 398.

purchases within a specific period of time; and (b) AMEX has a right to review a cardholder's credit card history. **Our recognition of these entitlements, however, does not give AMEX an unlimited right to put off action on cardholders' purchase requests for indefinite periods of time**. In acting on cardholders' purchase requests, AMEX must take care not to abuse its rights and cause injury to its clients and/or third persons. We cite in this regard Article 19, in conjunction with Article 21, of the Civil Code, which provide:

> Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith.
>
> Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

Article 19 pervades the entire legal system and ensures that a person suffering damage in the course of another's exercise of right or performance of duty, should find himself without relief.[36] It sets the standard for the conduct of all persons, whether artificial or natural, and requires that everyone, in the exercise of rights and the performance of obligations, must: (a) act with justice, (b) give everyone his due, and (c) observe honesty and good faith. It is not because a person invokes his rights that he can do anything, even to the prejudice and disadvantage of another.[37]

While Article 19 enumerates the standards of conduct, Article 21 provides the remedy for the person injured by the willful act, an action for damages. We explained how these two provisions correlate with each other in *GF Equity, Inc. v. Valenzona*:[38]

> [Article 19], known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must

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[36] Albano, Ed Vincent. *Persons and Family Relations*, 3rd Edition, 2006, p. 66, citing the Report of the Code Commission, p. 39.

[37] *Id.*, at 67.

[38] G.R. No. 156841, June 30, 2005, 462 SCRA 466.

be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed. **A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible.** But while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper.

In the context of a credit card relationship, although there is neither a contractual stipulation nor a specific law requiring the credit card issuer to act on the credit card holder's offer within a definite period of time, these principles provide the standard by which to judge AMEX's actions.

According to Pantaleon, even if AMEX did have a right to review his charge purchases, it abused this right when it unreasonably delayed the processing of the Coster charge purchase, as well as his purchase requests at the Richard Metz' Golf Studio and Kids' Unlimited Store; AMEX should have known that its failure to act immediately on charge referrals would entail inconvenience and result in humiliation, embarrassment, anxiety and distress to its cardholders who would be required to wait before closing their transactions.[39]

It is an elementary rule in our jurisdiction that good faith is presumed and that the burden of proving bad faith rests upon the party alleging it.[40] Although it took AMEX some time before it approved Pantaleon's three charge requests, we find no evidence

[39] *Rollo*, p. 50.

[40] *Barons Marketing Corp. v. Court of Appeals*, G.R. No. 126486, February 9, 1998, 286 SCRA 96, 105.

to suggest that it acted with deliberate intent to cause Pantaleon any loss or injury, or acted in a manner that was contrary to morals, good customs or public policy. We give credence to AMEX's claim that its review procedure was done to ensure Pantaleon's own protection as a cardholder and to prevent the possibility that the credit card was being fraudulently used by a third person.

Pantaleon countered that this review procedure is primarily intended to protect AMEX's interests, to make sure that the cardholder making the purchase has enough means to pay for the credit extended. Even if this were the case, however, we do not find any taint of bad faith in such motive. It is but natural for AMEX to want to ensure that it will extend credit only to people who will have sufficient means to pay for their purchases. AMEX, after all, is running a business, not a charity, and it would simply be ludicrous to suggest that it would not want to earn profit for its services. Thus, so long as AMEX exercises its rights, performs its obligations, and generally acts with good faith, with no intent to cause harm, even if it may occasionally inconvenience others, it cannot be held liable for damages.

We also cannot turn a blind eye to the circumstances surrounding the Coster transaction which, in our opinion, justified the wait. In Edgardo Jaurigue's own words:

Q 21: With reference to the transaction at the Coster Diamond House covered by Exhibit H, also Exhibit 4 for the defendant, the approval came at 2:19 a.m. after the request was relayed at 1:33 a.m., can you explain why the approval came after about 46 minutes, more or less?

A21: Because we have to make certain considerations and evaluations of [Pantaleon's] past spending pattern with [AMEX] at that time before approving plaintiff's request because [Pantaleon] was at that time making **his very first single charge purchase of US$13,826** [this is below the US$16,112.58 actually billed and paid for by the plaintiff because the difference was already automatically approved by [AMEX] office in Netherland[s] **and the record of [Pantaleon's] past spending with [AMEX] at that time does not favorably support his ability to pay for such purchase**. In fact, if the foregoing internal policy of [AMEX] had been strictly followed, the transaction would not have been approved at all considering that the past spending pattern

of the plaintiff with [AMEX] at that time does not support his ability to pay for such purchase.[41]

xxx xxx xxx

Q: Why did it take so long?

A: It took time to review the account on credit, so, if there is any delinquencies [sic] of the cardmember. There are factors on deciding the charge itself which are standard measures in approving the authorization. Now in the case of Mr. Pantaleon although his account is single charge purchase of US$13,826. [*sic*] this is below the US$16,000. plus actually billed x x x we would have already declined the charge outright and asked him his bank account to support his charge. But due to the length of his membership as cardholder we had to make a decision on hand.[42]

As Edgardo Jaurigue clarified, the reason why Pantaleon had to wait for AMEX's approval was because he had to go over Pantaleon's credit card history for the past twelve months.[43] It would certainly be unjust for us to penalize AMEX for merely exercising its right to review Pantaleon's credit history meticulously.

Finally, we said in *Garciano v. Court of Appeals* that "*the right to recover [moral damages] under Article 21 is based on equity, and he who comes to court to demand equity, must come with clean hands. Article 21 should be construed as granting the right to recover damages to injured persons who are not themselves at fault*."[44] As will be discussed below, Pantaleon is not a blameless party in all this.

Pantaleon's action was the proximate cause for his injury

Pantaleon mainly anchors his claim for moral and exemplary damages on the embarrassment and humiliation that he felt when

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[41] RTC Records, p. 210.

[42] *Id.* at 1064.

[43] *Id.* at 1074.

[44] G.R. No. 96126, August 10, 1992, citing *Mabutas v. Calapan Electric Co. [CA]*, 50 OG 5828 (cited in Padilla, *Civil Code Annotated*, Vol. 1, 1975 ed., p. 87).

the European tour group had to wait for him and his wife for approximately 35 minutes, and eventually had to cancel the Amsterdam city tour. After thoroughly reviewing the records of this case, we have come to the conclusion that Pantaleon is the proximate cause for this embarrassment and humiliation.

As borne by the records, Pantaleon knew even before entering Coster that the tour group would have to leave the store by 9:30 a.m. to have enough time to take the city tour of Amsterdam before they left the country. After 9:30 a.m., Pantaleon's son, who had boarded the bus ahead of his family, returned to the store to inform his family that they were the only ones not on the bus and that the entire tour group was waiting for them. Significantly, **Pantaleon tried to cancel the sale at 9:40 a.m. because he did not want to cause any inconvenience to the tour group**. However, when Coster's sale manager asked him to wait a few more minutes for the credit card approval, he agreed, despite the knowledge that he had already caused a 10-minute delay and that the city tour could not start without him.

In *Nikko Hotel Manila Garden v. Reyes*,[45] we ruled that a person who knowingly and voluntarily exposes himself to danger cannot claim damages for the resulting injury:

> The doctrine of *volenti non fit injuria* ("to which a person assents is not esteemed in law as injury") refers to self-inflicted injury or to the consent to injury which precludes the recovery of damages by one who has knowingly and voluntarily exposed himself to danger, even if he is not negligent in doing so.

This doctrine, in our view, is wholly applicable to this case. Pantaleon himself testified that the most basic rule when travelling in a tour group is that *you must never be a cause of any delay because the schedule is very strict*.[46] When Pantaleon made up his mind to push through with his purchase, he must have known that the group would become annoyed and irritated with him. This was the natural, foreseeable consequence of his decision to make them all wait.

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[45] G.R. No. 154259, February 28, 2005.

[46] RTC records, pp. 1299-1300.

We do not discount the fact that Pantaleon and his family did feel humiliated and embarrassed when they had to wait for AMEX to approve the Coster purchase in Amsterdam. We have to acknowledge, however, that Pantaleon was not a helpless victim in this scenario – at any time, he could have cancelled the sale so that the group could go on with the city tour. But he did not.

More importantly, AMEX did not violate any legal duty to Pantaleon under the circumstances under the principle of *damnum absque injuria*, or damages without legal wrong, loss without injury.[47] As we held in *BPI Express Card v. CA*:[48]

> We do not dispute the findings of the lower court that private respondent suffered damages as a result of the cancellation of his credit card. However, there is a material distinction between damages and injury. Injury is the illegal invasion of a legal right; damage is the loss, hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, **there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty**. **In such cases, the consequences must be borne by the injured person alone**, the law affords no remedy for damages resulting from an act which does not amount to a legal injury or wrong. These situations are often called *damnum absque injuria*.
>
> In other words, in order that a plaintiff may maintain an action for the injuries of which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff - a concurrence of injury to the plaintiff and legal responsibility by the person causing it. **The underlying basis for the award of tort damages is the premise that an individual was injured in contemplation of law**. Thus, there must first be a breach of some duty and the imposition of liability for that breach before damages may be awarded; and the breach of such duty should be the proximate cause of the injury.

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[47] See 17 C.J., 1125; *Gilchrist v. Cuddy*, 29 Phil. 542.

[48] G.R. No. 120639, September 25, 1998.

Pantaleon is not entitled to damages

Because AMEX neither breached its contract with Pantaleon, nor acted with culpable delay or the willful intent to cause harm, we find the award of moral damages to Pantaleon unwarranted.

Similarly, we find no basis to award exemplary damages. In contracts, exemplary damages can only be awarded if a defendant acted "in a wanton, fraudulent, reckless, oppressive or malevolent manner."[49] The plaintiff must also show that he is entitled to moral, temperate, or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded.[50]

As previously discussed, it took AMEX some time to approve Pantaleon's purchase requests because it had legitimate concerns on the amount being charged; no malicious intent was ever established here. In the absence of any other damages, the award of exemplary damages clearly lacks legal basis.

Neither do we find any basis for the award of attorney's fees and costs of litigation. No premium should be placed on the right to litigate and not every winning party is entitled to an automatic grant of attorney's fees.[51] To be entitled to attorney's fees and litigation costs, a party must show that he falls under one of the instances enumerated in Article 2208 of the Civil Code.[52] This, Pantaleon failed to do. Since we eliminated the

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[49] CIVIL CODE, Article 2232.

[50] *Ibid.* Article 2234.

[51] *Tanay Recreation Center and Development Corp. v. Fausto*, 495 Phil. 400 (2005).

[52] Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

award of moral and exemplary damages, so must we delete the award for attorney's fees and litigation expenses.

Lastly, although we affirm the result of the CA decision, we do so for the reasons stated in this Resolution and not for those found in the CA decision.

WHEREFORE, premises considered, we *SET ASIDE* our May 8, 2009 Decision and *GRANT* the present motion for reconsideration. The Court of Appeals Decision dated August 18, 2006 is hereby *AFFIRMED.* No costs.

SO ORDERED.

Carpio Morales (Acting Chairperson), Velasco, Jr., Leonardo-de Castro, and *Bersamin*[*]*, JJ.,* concur.

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(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[*] Designated additional Member of the Special Second Division, per Raffle dated August 10, 2010.

SECOND DIVISION

[G.R. No. 174593. August 25, 2010]

ALEX GURANGO, *petitioner, vs.* **BEST CHEMICALS AND PLASTICS, INC. and MOON PYO HONG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS; CASE AT BAR.— As a general rule, only questions of law may be raised in petitions for certiorari under Rule 45 of the Rules of Court. Section 1 of Rule 45 states that, "The petition shall raise only questions of law." In *Triumph International (Phils.), Inc. v. Apostol*, the Court enumerated exceptions to the rule. Among the exceptions are when the findings of fact are conflicting and when the findings are conclusions without citation of specific evidence on which they are based. In the present case, the findings of fact of the Court of Appeals conflict with the findings of fact of the NLRC and the Labor Arbiter. Also, the finding of the Court of Appeals that Gurango engaged in a fistfight is a conclusion without citation of specific evidence on which it is based.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; EMPLOYER HAS THE BURDEN OF PROVING BY SUBSTANTIAL EVIDENCE THAT THE DISMISSAL IS FOR JUST CAUSE.— In termination cases, the employer has the burden of proving, by substantial evidence, that the dismissal is for just cause. If the employer fails to discharge the burden of proof, the dismissal is deemed illegal. In *AMA Computer College — East Rizal v. Ignacio*, the Court held that: In termination cases, the burden of proof rests on the employer to show that the dismissal is for just cause. When there is no showing of a clear, valid and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause. And the quantum

of proof which the employer must discharge is substantial evidence. An employee's dismissal due to serious misconduct must be supported by substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. In the present case, aside from Albao's statement, BCPI did not present any evidence to show that Gurango engaged in a fistfight.

3. ID.; ID.; ID.; JUST CAUSES; SERIOUS MISCONDUCT; THE ACT OR CONDUCT COMPLAINED OF HAS NOT ONLY VIOLATED SOME ESTABLISHED RULES OR POLICIES BUT MUST ALSO HAVE BEEN PERFORMED WITH WRONGFUL INTENT.— [T]here is no showing that Gurango's actions were performed with wrongful intent. In *AMA Computer College – East Rizal*, the Court held that: The Labor Code provides that an employer may terminate the services of an employee for a just cause. Among the just causes in the Labor Code is serious misconduct. Misconduct is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct to be serious within the meaning of the Labor Code must be of such a grave and aggravated character and not merely trivial or unimportant. x x x In *National Labor Relations Commission v. Salgarino*, the Court stressed that "[**i**]**n order to constitute serious misconduct which will warrant the dismissal of an employee under paragraph (a) of Article 282 of the Labor Code, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent**."

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF LABOR OFFICIALS, WHO ARE DEEMED TO HAVE ACQUIRED EXPERTISE IN MATTERS WITHIN THEIR JURISDICTION, ARE ACCORDED NOT ONLY RESPECT BUT FINALITY WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE.— In *Triumph International (Phils.), Inc.*, the Court held that factual findings of labor officials, who are deemed to have acquired expertise in matters

within their jurisdiction, are accorded not only respect but finality when supported by susbstantial evidence.

APPEARANCES OF COUNSEL

Clarizza Gurango- Mendoza for petitioner.
Roxas Delos Reyes Laurel & Rosario for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 20 July 2006 Decision[2] and 11 September 2006 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 94004. The Court of Appeals set aside the 17 October 2005[4] and 24 January 2006[5] Resolutions of the National Labor Relations Commission (NLRC) in CA No. 044428-05, affirming the 6 July 2004 Decision[6] of the Labor Arbiter in NLRC NCR Case No. 05-06181-03.

The Facts

Respondent Best Chemicals and Plastics, Inc. (BCPI) is a corporation engaged in the manufacture of biaxially oriented polypropylene and related products. Respondent Moon Pyo Hong (Hong) is the president and chief executive officer of BCPI.

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[1] *Rollo*, pp. 3-30.

[2] *Id.* at 32-40. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe concurring.

[3] *Id.* at 42.

[4] *Id.* at 67-78. Penned by Commissioner Romeo C. Lagman, with Presiding Commisioner Lourdes C. Javier and Commisioner Tito F. Genilo concurring.

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

[6] *Id.* at 59-65. Penned by Labor Arbiter Arthur L. Amansec.

Petitioner Alex R. Gurango (Gurango) and Romeo S. Albao (Albao) worked as boiler operator and security guard, respectively, in BCPI. In a memorandum[7] dated 2 May 2003, BCPI prohibited its empoyees from bringing personal items to their work area. Erring employees would be suspended for six days. BCPI stated that:

> Please be reminded of the following existing rules and regulations that all employees are expected to strictly observe and adhere to:
>
> xxx xxx xxx
>
> Bringing in to work station/area of personal belongings other than those required in the performance of one's duty which disrupt/obstruct Company's services and operations, except those authorized by higher authorities. This offense shall include the following items [sic]: radios, walkman, discman, make-up kits, ladies' bags, workers' knapsacks and the like which must be left behind and safe kept [sic] in the employees' respective lockers. This being a Serious Offense, the penalty of which is six (6) days suspension from work without pay.[8]

Gurango and Albao presented two conflicting sets of facts as to what happened on 5 May 2003.

According to Gurango, at 4 a.m., he performed his routine check-up inside the production area. He had in his pocket a camera without film. On his way out of the production area, he saw Albao standing near the bundy clock. Albao pulled him, grabbed his pocket, and tried to confiscate the camera. Gurango refused to give the camera because there was no reason to surrender it.

Albao held Gurango's arm and punched him on the face. Gurango shouted for help. Another security guard, Rodenio I. Pablis (Pablis), arrived. Instead of pacifying Albao, Pablis joined in punching and kicking Gurango. Albao and Pablis banged Gurango's head against the floor and provoked him to fight back.

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[7] *Id.* at 44.

[8] *Id.*

Gurango's co-worker, Elvin Juanitas (Juanitas), saw what happened and asked Albao and Pablis to stop hitting Gurango. Albao and Pablis brought Gurango to the guardhouse. Officer-in-charge Rommel M. Cordero (Cordero) locked the guardhouse, then ordered Albao and Pablis to continue hitting Gurango. Freddie Infuerto arrived at the guardhouse and asked the security guards to stop hitting Gurango. Gurango agreed to surrender the camera on the condition that the security guards would prepare a document acknowledging receipt of the camera.

Albao, on the other hand, alleged that he was on duty at the main entrance of the production area from 7 p.m. of 4 May 2003 to 7 a.m. of 5 May 2003. At 4:20 a.m., Gurango tried to enter the production area bringing a camera. Albao told Gurango that he could not bring the camera inside the production area. Gurango got mad and tried to grab Albao's gun. Albao and Gurango engaged in a fistfight. Cordero, Pablis, and another security guard, Fredrick Lañada, arrived and stopped the fight.

On 5 May 2003, at 8:35 a.m., Gurango went to Dr. Homer L. Aguinaldo (Dr. Aguinaldo) for examination and treatment. Dr. Aguinaldo issued a medical report[9] and advised Gurango to rest for three days.

In a letter[10] dated 5 May 2003, BCPI asked Gurango to explain in writing why no disciplinary action should be taken against him and then placed him under preventive suspension effective 6 May 2003. On 6 May 2003, Gurango wrote a letter[11] to BCPI narrating what happened. On 8 May 2003, Gurango wrote another letter[12] to BCPI stating that:

> I already explained my side of the story regarding the alleged fistfight between Romeo Albao and me. I would like to reiterate that I was never involved in any fistfight nor commit any violation of our Company's Code of Discipline.

[9] *Id.* at 48-49.

[10] *Id.* at 51.

[11] *Id.* at 50.

[12] *Id.* at 52.

Another issue is the preventive suspension I'm undergoing with [sic]. I would like to question the propriety of such action. Be reminded that you are putting me under indefinite preventive suspension.

Under the law, an employee may be placed under preventive suspension only if his continued employment poses a serious and imminent threat to the life and property of the employer or of his co-employees. Consequently, without this kind of threat, preventive suspension is improper.[13]

On 9 May 2003, Juanitas wrote a letter[14] to BCPI narrating what he saw. Juanitas stated that:

Noong May *5 bandang alas 4:20 ng madaling araw ako po ay lumabas ng electral [sic] shop upang pumunta sa production upang mag monitor. Ng sa bandang locker room pa lang ako may nakita ako tatlong tao na nakasuot ng kulay puti na nagpaikot-ikot (sa harapan banda ng bandi [sic] clock). Medyo madilim pa kaya hindi ko nakita si Alex Gurango kasi nakasoot sya ng kulay dark blue na T-shirt. Ng medyo malapit na ako nakarinig ako ng boses na (tama na nasasaktan na ako) at may sumagot na ibigay mo na masasaktan ka lang. Ng makalapit na ako sa kanila nakita ko na iniipit na ng kanang braso ni Albao (Guard) ang leeg ni Alex. Akala ko nagbibiroan lang sila. Tinanong ko kung ano yan pero bago ako tumanong sa kanila nakita ko na nasasaktan na si Alex dahil sa pagkaipit sa kanyang leeg. Sagot ni Alex sa akin pre (ako) kinukuha nila ang kamera sa akin to eh. Sabi pa ni Alex hindi ko to ibibigay sa inyo kahit ako'y saktan nyo, hindi ako lalaban sa inyo. May pagbibigyan ako, ibibigay ko to sa management. Sabi ko ano ba yan nasasaktan na ang tao. Nagtataka naman ako sa kanila ni Pables at Lañada bakit hindi nila inaawat, nakatingin lang sila at kasamahan pa nila. Ako naman natatakot akong paghiwalayin sila kasi may baril si Albao na naka sabit sa beywang nya baka pag inawat ko baka sasabihin ni Albao na kumampi ako kay Alex dahil parehas kaming maintenance. Sinabihan ko si Albao na bitiwan mo si Alex ayusin natin to. Hindi pa rin binitiwan ni Albao ang pagkaipit sa leeg ni Alex hanggang sa naitulak ko sila papunta sa guardhouse. Ng sa loob na ng guardhouse hindi pa rin binitiwan ni Albao si Alex kaya hinahanap ko ang kanilang O.I.C. Para ayusin na. Maya maya lumabas si*

[13] *Id.*

[14] *Id.* at 45-47.

Cordero (O.I.C.). Sabi ko awatin niya si Albao pero hindi manlang nya inawat pati na ang kanyang mga kasama dahil nandoon pa rin sa loob ng guardhouse sina Pables, Lañada at Cordero. Lumabas ako at tinawag ko si Pong sa kanilang shop. Bumalik ako sa guardhouse kasama si Pong, ganon pa rin nakakapit pa rin ang braso ni Albao sa leeg ni Alex. Ngayon naglakas loob na lang ako na paghiwalayin sila. Nahirapan ako dahil malakas si Albao. Napaghiwalay ko sila pero muntik pa nga ako tamaan ng kamay ni Albao at ng maghiwalay na pinaupo ko si Alex sa upuan sa tabi at hinarang ko si Albao dahil gusto pa nyang lumapit kay Alex at nagsabi ako kay Pong na bantayan mo si Alex dahil tatawag ako ng Korean o supervisor para ayusin.[15]

On 10 May 2003, BCPI wrote a letter to Gurango finding him guilty of engaging in a fistfight and violating company policy by bringing a camera. On 14 May 2003, Gurango wrote a letter[16] to BCPI stating that:

I again would like to reiterate that I was never involved nor commit [sic] any violation of Company's Code of Discipline.

For me to further explain, could you please be more specific what company policies are you referring to when you said that bringing of camera inside the production area and refusal to surrender the same camera constitute infractions of company policy.[17]

On 15 May 2003, Gurango filed with the 5th Municipal Circuit Trial Court (MCTC), Carmona, Cavite, a criminal complaint[18] against Albao, Cordero and Pablis for slight physical injury.

In a letter[19] dated 19 May 2003, BCPI dismissed Gurango effective 20 May 2003. BCPI stated that:

After a thorough evaluation and intensive deliberation on the facts attendant to your case, Management has found you to have committed the following Offenses under the Company's Code of Discipline:

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[15] *Id.*

[16] *Id.* at 53.

[17] *Id.*

[18] *Id.* at 54.

[19] *Id.* at 56-57.

1. Concealing and bringing in to work station/area of personal belongings (*e.g.*, a camera), other than those required in the performance of one's duty which disrupt/obstruct Company services and operations, except those authorized by higher authorities. (Table II, Serious, No. 10 of Code of Discipline);

2. Utter disregard for or refusal to submit to reasonable inspection connected within [sic] the Company premises by authorized Company security personnel in the conduct of their business. (Table IV, Minor, No. 1 of Code of Discipline);

3. Starting or provoking a fight, *i.e.*, involvement in a fist fight with a security guard last May 5, 2003. (Table I, Grave, No. 6 of Code of Discipline);

4. Attempting to inflict or inflicting bodily injury upon any Company official (*e.g.*, security guard who is a peacekeeping officer of the company) or employee. (Table I, Grave, No. 05 of Code of Discipline); and

5. Intentionally causing personal injury to another person (*i.e.*, the security guard) within the Company premises. (Table I, Grave, No. 12 of Code of Discipline).

xxx xxx xxx

Based on the foregoing, and in view of the gravity of the offenses that you have committed which constitute gross misconduct, the Company is constrained to terminate your employment for cause effective May 20, 2003, at the close of business hours.[20]

On 26 May 2003, Gurango filed with the NLRC a complaint against BCPI and Hong for illegal dismissal.

The Labor Arbiter's Ruling

In his 6 July 2004 Decision, the Labor Arbiter found BCPI liable for illegal dismissal. The Labor Arbiter ordered BCPI to pay Gurango backwages and separation pay. The Labor Arbiter held that:

I find that the complainant was illegally dismissed from employment.

[20] *Id*.

He was dismissed from [sic] trying to bring an alleged prohibited item, a camera, inside the Production Area but company rules did not prohibit the bringing of camera.

How can an unloaded camera be said to "disrupt/obstruct company services and operations"? It cannot.

As to the alleged fistfight between the complainant and security guard Albao, I am more inclined to believe and find credible complainant's version that he was mauled by Albao and, later, by some of the guards.

His letter/statement was made on May 6, 2003, or only a day after the incident. The statement of guard Albao was made on May 28, 2003, several days after the incident.

I find that complainant's statement is freshly unblemished, and, therefore, very credible while Albao's contradictory statement is the fruit of afterthought.

Moreover, I don't find the complainant was foolish enough to try to snatch the gun of Albao during the incident. I am convinced Albao lied in his statement.

xxx xxx xxx

In the present case, no solid cause exists to dismiss complainant from employment as to warrant a dismissal.[21]

BCPI and Hong appealed to the NLRC.

The NLRC's Ruling

In its 17 October 2005 Resolution, the NLRC affirmed *in toto* the Labor Arbiter's 6 July 2004 Decision. The NLRC held that:

Although fighting within company premises constitute serious misconduct, this however, does not apply in this case. Complainant did not start nor provoke the fight. It was precipitated, instead, by guard Albao when he tried to get the complainant's camera for no valid reason. The statement of Albao that complainant tried to snatch his service firearm is not only unbelievable but is also exaggerated. The Labor Arbiter is correct and we concur in his finding that the

[21] *Id.* at 63-64.

complainant was not foolish enough to try to snatch the gun of Albao. The camera is undisputably owned by complainant. Bringing it inside his workplace is not a crime. So why would he try to snatch a gun for a very trivial misunderstanding. What is clear is that the security guards over acted in the performance of their duty.

xxx xxx xxx

x x x The prohibition against the bringing of personal belongings in to the work station/area is qualified by a condition that such belongings will disrupt/obstruct company's services and operations. That is why in the enumerations the following are included, radios, walkman, discman, make-up kits, ladies' bag workers' knapsacks and the like. An unloaded camera is not listed and we cannot imagine how such camera could disrupt or obstruct company services and operations.

Moreover, even if we assume that the complainant indeed violated this Inter-Office Memorandum, still, this will not justify complainant's dismissal because the penalty provided therein is only six (6) days suspension from work without pay, not dismissal.[22]

BCPI and Hong filed a motion for reconsideration, which the NLRC denied. BCPI and Hong filed with the Court of Appeals a petition for *certiorari* under Rule 65 of the Rules of Court.

The Court of Appeals' Ruling

In its 20 July 2006 Decision, the Court of Appeals set aside the 17 October 2005 and 24 January 2006 Resolutions of the NLRC. The Court of Appeals held that "private respondent engaged himself in a fistfight with the security guard"[23] and that engaging in a fistfight constituted serious misconduct.

Gurango filed a motion[24] for reconsideration, which the Court of Appeals denied in its 11 September 2006 Resolution. Hence, the present petition.

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[22] *Id.* at 75-77.

[23] *Id.* at 37.

[24] *Id.* at 94-109.

The Issue

Gurango raises as issue that the Court of Appeals erred in ruling that he was legally dismissed. BCPI failed to prove that he engaged in a fistfight and that there was just cause for his dismissal.

The Court's Ruling

The petition is meritorious.

As a general rule, only questions of law may be raised in petitions for *certiorari* under Rule 45 of the Rules of Court. Section 1 of Rule 45 states that, "The petition shall raise only questions of law." In *Triumph International (Phils.), Inc. v. Apostol*,[25] the Court enumerated exceptions to the rule. Among the exceptions are when the findings of fact are conflicting and when the findings are conclusions without citation of specific evidence on which they are based.[26]

In the present case, the findings of fact of the Court of Appeals conflict with the findings of fact of the NLRC and the Labor Arbiter. Also, the finding of the Court of Appeals that Gurango engaged in a fistfight is a conclusion without citation of specific evidence on which it is based.

In termination cases, the employer has the burden of proving, by substantial evidence, that the dismissal is for just cause. If the employer fails to discharge the burden of proof, the dismissal is deemed illegal. In *AMA Computer College — East Rizal v. Ignacio*,[27] the Court held that:

> In termination cases, the burden of proof rests on the employer to show that the dismissal is for just cause. When there is no showing of a clear, valid and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause. And the quantum of proof which the employer

[25] G.R. No. 164423, 16 June 2009, 589 SCRA 185.

[26] *Id.* at 195-196.

[27] G.R. No. 178520, 23 June 2009, 590 SCRA 633.

must discharge is substantial evidence. An employee's dismissal due to serious misconduct must be supported by substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[28]

In the present case, aside from Albao's statement, BCPI did not present any evidence to show that Gurango engaged in a fistfight. Moreover, there is no showing that Gurango's actions were performed with wrongful intent. In *AMA Computer College – East Rizal*, the Court held that:

> The Labor Code provides that an employer may terminate the services of an employee for a just cause. Among the just causes in the Labor Code is serious misconduct. Misconduct is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct to be serious within the meaning of the Labor Code must be of such a grave and aggravated character and not merely trivial or unimportant. x x x
>
> In *National Labor Relations Commission v. Salgarino*, the Court stressed that "[**i**]**n order to constitute serious misconduct which will warrant the dismissal of an employee under paragraph (a) of Article 282 of the Labor Code, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent**."
>
> After a thorough examination of the records of the case, however, the Court finds that petitioner AMACCI miserably failed to prove by substantial evidence its charges against respondent. There is no showing at all that respondent's actions were motivated by a perverse and wrongful intent, as required by Article 282(a) of the Labor Code.[29] (Emphasis supplied)

The surrounding circumstances show that Gurango did not engage in a fistfight: (1) in his 9 May 2003 letter to BCPI,

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[28] *Id.* at 651-652.

[29] *Id.* at 655.

Juanitas corroborated Gurango's version of the facts; (2) nobody corroborated Albao's version of the facts; (3) in his medical report, Dr. Aguinaldo found that Gurango suffered physical injuries; (4) Gurango filed with the MCTC a complaint against Albao, Cordero and Pablis for slight physical injury; (5) the Labor Arbiter found Gurango's statement credible and unblemished; (6) the Labor Arbiter found Albao's statement contradictory; (7) the Labor Arbiter stated, "I am convinced Albao lied in his statement"; (8) the NLRC found that Gurango did not start a fight; (9) the NLRC found Albao's statement unbelievable and exaggerated; and (10) the Court of Appeals' reversal of the findings of fact of the Labor Arbiter and the NLRC is baseless.

In *Triumph International (Phils.), Inc.*, the Court held that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are accorded not only respect but finality when supported by susbstantial evidence.[30]

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 20 July 2006 Decision and 11 September 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 94004 and *REINSTATE* the 17 October 2005 and 24 January 2006 Resolutions of the NLRC in CA No. 044428-05.

SO ORDERED.

Corona, C.J.,[*] *Peralta, Abad,* and *Mendoza, JJ.,* concur.

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[30] *Supra* note 25 at 198.

[*] Designated additional member per Raffle dated 23 August 2010.

FIRST DIVISION

[G.R. No. 175784. August 25, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAIME AYOCHOK *y* TAULI,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; EXTINCTION OF CRIMINAL LIABILITY; DEATH OF ACCUSED PENDING APPEAL; EXTINGUISHES NOT ONLY THE CRIMINAL LIABILITY BUT ALSO THE CIVIL LIABILITY SOLELY ARISING FROM OR BASED ON THE CRIME.— Ayochok's death on January 15, 2010, during the pendency of his appeal, extinguished not only his criminal liability for the crime of murder committed against Senior Police Officer 1 Claudio N. Caligtan, but also his civil liability solely arising from or based on said crime. According to Article 89(1) of the Revised Penal Code, criminal liability is totally extinguished: 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

2. ID.; ID.; ID.; GUIDELINES.— Applying the foregoing provision, we laid down the following guidelines in *People v. Bayotas*: 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*." 2. Corollarily, the claim for civil liability survives notwithstanding the death of (the) accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission: a) Law b) Contracts c) Quasi-contracts x x x e) Quasi-delicts 3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate

civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above. 4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with the provisions of Article 1155 of the Civil Code that should thereby avoid any apprehension on a possible privation of right by prescription.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Marissa J. Madrid-Dacayanan for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before Us is an appeal filed by Jaime Ayochok *y* Tauli (Ayochok) assailing the Decision[1] dated June 28, 2005 of the Court of Appeals in CA-G.R. CR No. 00949, entitled *People of the Philippines v. Jaime Ayochok y Tauli*, which affirmed with modifications the Decision dated August 13, 2003 of the Regional Trial Court (RTC) of Baguio City, Branch 6, in Criminal Case No. 18658-R.[2] The RTC found Ayochok guilty beyond reasonable doubt of the crime of Murder.

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[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Godardo A. Jacinto and Rosalinda Asuncion-Vicente concurring; *rollo*, pp. 3-13.

[2] CA *rollo*, pp. 123-147.

In an Amended Information[3] dated September 21, 2001, Prosecutor Benedicto T. Carantes charged Ayochok with Murder, committed as follows:

> That on or about the 15th day of July, 2001, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a gun, with intent to kill and with evident premeditation and by means of treachery and with cruelty by deliberately and inhumanly outraging at the victim, did then and there willfully, unlawfully and feloniously attack, assault and shoot SPO1 CLAUDIO CALIGTAN *y* NGODO in the following manner, to wit: that while the victim was relieving himself with his back turned to the accused, the latter coming from the blind side of the victim, shoot him several times hitting him on the different parts of his body and there was no opportunity or means to defend himself from the treacherous act of the assailant, thereby inflicting upon the latter: hypovolemic shock due to massive hemorrhage; multiple gunshot wounds on the head, neck, and upper extremities which directly caused his death.

When arraigned, Ayochok pleaded not guilty.

After trial on the merits of Criminal Case No. 18658-R, the RTC rendered a Decision on August 13, 2003, the dispositive portion of which reads:

> WHEREFORE, the Court finds the accused Jaime Ayochok guilty beyond reasonable doubt of the offense of Murder, defined and penalized under Article 248 of the Revised Penal Code as amended, qualified by treachery as charged in the Information and hereby sentences him to reclusion perpetua; to indemnify the heirs of the deceased SPO1 Claudio Caligtan the sum of ₱75,000.00 as civil indemnity for his death; ₱200,000.00 as moral damages; ₱378,956.50 as actual damages in connection with his death; ₱2,573,096.40 as unearned income, all indemnifications being without subsidiary imprisonment in case of insolvency; and to pay the costs.
>
> The accused Jaime Ayochok being a detention prisoner is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code.[4]

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[3] *Id.* at 20.

[4] *Id.* at 146-147.

Ayochok was committed at the New Bilibid Prison in Muntinlupa City on October 31, 2003.

The case was directly elevated to us for automatic review and was docketed as G.R. No. 161469. However, pursuant to our decision in *People v. Mateo*[5] – which modified the pertinent provisions of the Revised Rules on Criminal Procedure on direct appeals from the RTC to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment – G.R. No. 161469 was transferred to the Court of Appeals,[6] where it was docketed as CA-G.R. CR No. 00949.

In its Decision dated June 28, 2005, the Court of Appeals affirmed with modifications the RTC judgment, to wit:

> WHEREFORE, in view of the foregoing premises, the Decision subject of this review is hereby AFFIRMED, save for several modifications in the civil aspect. Accordingly, the civil indemnity is reduced to ₱50,000.00; moral damages reduced to ₱50,000.00; actual damages reduced to ₱144,375.75 and unearned income reduced to ₱2,571,696.10.[7]

Initially, Ayochok filed a Motion for Reconsideration[8] of the foregoing Decision of the Court of Appeals. Subsequently, however, Ayochok filed a Motion to Withdraw Motion for Reconsideration with Notice of Appeal[9] since he believed there was no chance that the appellate court would reverse itself, and prayed that the case already be forwarded to us instead. In a Resolution dated June 14, 2006, the Court of Appeals denied Ayochok's Motion to Withdraw Motion for Reconsideration with Notice of Appeal. In another Resolution

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[5] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[6] CA *rollo*, p. 211.

[7] *Rollo*, p. 13.

[8] CA *rollo*, pp. 236-243.

[9] *Id.* at 252-254.

dated August 11, 2006, the appellate court denied Ayochok's Motion for Reconsideration of the Decision dated June 28, 2005.

Ayochok, through counsel, filed a Notice of Appeal with the Court of Appeals conveying his intention to appeal to us the Decision dated June 28, 2005 of said court. On December 29, 2006, the Judicial Records Division of the Court of Appeals elevated to us the original records of CA-G.R. CR No. 00949,[10] and Ayochok's appeal was docketed as G.R. No. 175784.

On February 12, 2007, we required the parties in G.R. No. 175784 to file their supplemental briefs. [11]

Ayochok filed his Supplemental Appellant's Brief[12] on May 31, 2007, while the Office of the Solicitor General filed a Manifestation[13] on March 29, 2007, stating that it would no longer file a supplemental brief given that its Appellee's Brief, originally filed in G.R. No. 161469, is adequate to ventilate the People's cause. On August 6, 2007, we submitted G.R. No. 175784 for resolution.[14]

However, in a letter dated February 16, 2010, Julio A. Arciaga, the Assistant Director for Prisons and Security of the Bureau of Corrections, informed us that Ayochok had died on January 15, 2010 at the Philippine General Hospital, Manila. A copy of the death report signed by a medical officer of the New Bilibid Prison Hospital was attached to said letter.

In a Resolution dated April 28, 2010, we noted the letter and required the Director of the Bureau of Corrections to submit a certified true copy of Ayochok's death certificate from the local civil registrar within five days from notice of the said resolution.

On June 22, 2010, Melind M. Alipe, Head of the Medical and Dental Division of the New Bilibid Prison, Muntinlupa

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[10] *Rollo*, p. 1.

[11] *Id.* at 14.

[12] *Id.* at 24-41.

[13] *Id.* at 15-18.

[14] *Id.* at 44.

City, submitted a certified true copy of the death certificate of Ayochok.

Given Ayochok's death, we are now faced with the question of the effect of such death on the present appeal.

Ayochok's death on January 15, 2010, during the pendency of his appeal, extinguished not only his criminal liability for the crime of murder committed against Senior Police Officer 1 Claudio N. Caligtan, but also his civil liability solely arising from or based on said crime.

According to Article 89(1) of the Revised Penal Code, criminal liability is totally extinguished:

> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

Applying the foregoing provision, we laid down the following guidelines in *People v. Bayotas*[15]:

> 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."
> 2. Corollarily, the claim for civil liability survives notwithstanding the death of (the) accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:
>
> a) Law
>
> b) Contracts
>
> c) Quasi-contracts

[15] G.R. No. 102007, September 2, 1994, 236 SCRA 239.

xxx xxx xxx

e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with the provisions of Article 1155 of the Civil Code that should thereby avoid any apprehension on a possible privation of right by prescription.[16]

Clearly, in view of a supervening event, it is unnecessary for the Court to rule on Ayochok's appeal. Whether or not he was guilty of the crime charged has become irrelevant since, following Article 89(1) of the Revised Penal Code and our disquisition in *Bayotas*, even assuming Ayochok had incurred any criminal liability, it was totally extinguished by his death. Moreover, because Ayochok's appeal was still pending and no final judgment of conviction had been rendered against him when he died, his civil liability arising from the crime, being civil liability *ex delicto*, was likewise extinguished by his death.

Consequently, the appealed Decision dated June 28, 2005 of the Court of Appeals in CA-G.R. CR No. 00949 – finding Ayochok guilty of Murder, sentencing him to imprisonment, and ordering him to indemnify his victim – had become ineffectual.[17]

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[16] *Id.* at 255-256.

[17] *De Guzman v. People*, 459 Phil. 576, 580 (2003).

WHEREFORE, in view of the death of accused-appellant Jaime Ayochok *y* Tauli, the Decision dated June 28, 2005 of the Court of Appeals in CA-G.R. CR No. 00949 is *SET ASIDE* and Criminal Case No. 18658-R before the Regional Trial Court of Baguio City is *DISMISSED*. Costs *de oficio*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 177970. August 25, 2010]

AGRICULTURAL AND INDUSTRIAL SUPPLIES CORPORATION, DAILY HARVEST MERCANTILE, INC., JOSEPH C. SIA HETIONG and REYNALDO M. RODRIGUEZ, *petitioners, vs.* **JUEBER P. SIAZAR and THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; REEXAMINATION OF THE FACTS OF THE CASE, NOT PROPER AS A RULE; EXCEPTION.— Ordinarily, the Court will not, on petition for review on *certiorari*, reexamine the facts of the case. Here, however, since the CA overturned its earlier ruling and its factual findings now differ from those of the Labor Arbiter and the NLRC, the Court is making an exception.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TERMINATION BY

EMPLOYER; PROVEN IN CASE AT BAR.— From an examination of the record, the Court has ascertained that the evidence supports the CA's finding that the company dismissed Siazar from work. This is evident from the following: **One**. On company's orders, the guard prevented Siazar from entering its premises to work. The company even gave him notice not to report for work and instead told him to see the company's external counsel after two days. If the company had not yet decided to close down Siazar's department and wanted merely to explore that possibility with him, it had no reason to require him to stay away from work in the meantime. Barring him from work simply meant that the company had taken away his right to continue working for it. **Two**. It is simply preposterous for Siazar or any employee like him to just give up a job that paid ₱25,000.00 a month when, according to the company, it had not yet decided to carry out its plan and fire him. **Three**. That Siazar lost no time in filing a complaint for illegal dismissal negates the notion that he voluntarily left or abandoned his job. An employee who files a suit to claim his job back raises serious doubts that he even entertained the idea of leaving it in the first place. **Four**. Despite Siazar's failure to show up for work, the company did not summon him back or ask him to explain his long absence. Normally, an employer would not stand by when an employee just stops coming to work as this would affect its business. That the company just sat by when Siazar did not come to work strengthens his contention that it had dismissed him. Further, the company failed to substantiate its claim that it reported Siazar's irregular behavior to the Department of Labor and Employment. The Court cannot consider allegations that have not been proved. All these show that the company indeed terminated the services of Siazar.

3. ID.; ID.; ID.; ID.; ILLEGAL DISMISSAL; A DISMISSAL WHICH WAS NOT PROVEN TO BE FOR A JUST OR AUTHORIZED CAUSE WAS ILLEGAL.— [T]he company did not adduce any evidence to prove that Siazar's dismissal had been for a just or authorized cause as in fact it had been its consistent stand that it did not terminate him and that he quit on his own. But given that the company dismissed Siazar and that such dismissal had remained unexplained, there can be no other conclusion but that his dismissal was illegal.

4. ID.; ID.; ID.; ID.; SEPARATION PAY MAY BE AWARDED TO AN ILLEGALLY DISMISSED EMPLOYEE IN LIEU OF REINSTATEMENT WHEN CONTINUED EMPLOYMENT IS NO LONGER POSSIBLE.— The Court has held that, under Article 279 of the Labor Code, separation pay may be awarded to an illegally dismissed employee in lieu of reinstatement when continued employment is no longer possible where, as in this case, the continued relationship between the employer and the employee is no longer viable due to strained relations between them and reinstatement appears no longer practical due to the length of time that had since passed.

5. ID.; ID.; ID.; ID.; PAYMENT OF SEPARATION PAY AND BACKWAGES; PROPER IN CASE AT BAR.— In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to one month salary for every year of service reckoned from the first day of employment until the finality of the decision. Payment of separation pay is in addition to payment of backwages. And if separation pay is awarded instead of reinstatement, backwages shall be computed from the time of illegal termination up to the finality of the decision. The separation pay in this case shall be reckoned from the time Siazar worked for AISC, from June 1996 until the finality of this decision. The Court could not hold AISC liable for his work with DHMI for lack of evidence that the latter was simply an alter ego of AISC and had been established to evade an existing obligation, justify a wrong, or protect a fraud.

APPEARANCES OF COUNSEL

The Law Firm of Tiongco Avecilla Flores & Palarca for petitioners.

Laureano L. Galon, Jr. for private respondent.

D E C I S I O N

ABAD, *J.*:

This case dwells on circumstances that spell dismissal from work although the company insists that such circumstances indicate abandonment of work.

The Facts and the Case

On July 3, 1997 respondent Jueber P. Siazar (Siazar) filed a complaint for illegal dismissal and unfair labor practice against petitioner Agricultural and Industrial Supplies Corporation (AISC) and others before the National Labor Relations Commission (NLRC) in NLRC-NCR Case 00-07-04689-97.

Siazar claimed that he first worked for the Daily Harvest Mercantile, Inc. (DHMI) on April 12, 1993 but was transferred after three years in June 1996 to AISC[1] as product designer, mold maker, and CNC programmer with a monthly salary of ₱25,000.00.[2]

In early 1997, Siazar discovered that his company was not remitting much of his SSS premiums although the computations appeared on his pay slips. When he told his co-employees about it, they made their own inquiries, too.[3] On Siazar's arrival at work on June 17, 1997, the company guard refused him entry and handed him two notes from the management: one said that he was not to report for work;[4] the other said that he was to report after two days on June 19, 1997 to Atty. Rodriguez at his office in Binondo.[5]

Too anxious over the matter, Siazar did not wait for June 19 and went straightaway to see Atty. Rodriguez. The latter told

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[1] *Rollo*, p. 265.

[2] Records, p. 137; *rollo*, pp. 247-248.

[3] *Rollo*, p. 248.

[4] Records, p. 51.

[5] *Id.*

Siazar that the company had decided to abolish his department because of redundancy and he could no longer work. Atty. Rodriguez asked Siazar to make a computation of what amount he expected from the company and return to the lawyer with such computation on the following day and the company would immediately pay him.[6]

When Siazar told his co-employees about this development, they thought that the company removed him from work because of fear that he would agitate them into forming a union, given the non-remittance of the correct amounts of their SSS contributions.[7]

When Siazar and his wife saw Atty. Rodriguez again at his office on June 19, 1997, the latter insisted on getting Siazar to do the computation he asked. Because of the lawyer's insistence, Siazar finally gave him a computation of his claims against the company on June 23, 1997. As Siazar was unsure of his situation, however, he consulted a lawyer on that same day. This lawyer went with him back to Atty. Rodriguez who confirmed that Siazar had indeed been dismissed because his department was no longer earning money. This surprised Siazar because his department did not generate income on its own, being a mere support unit of the company.[8] Since all attempts at negotiation proved futile, Siazar filed his complaint.

AISC had a different version. It claimed the company thought of closing down Siazar's department where he worked solo since it was no longer making money. Thus, they wrote him the two notes on June 17, 1997.[9] Atty. Rodriguez did not say, however that the company was already dismissing Siazar.[10] The latter simply decided on his own to drop out of work after learning of the company's plan regarding his department.[11] What

[6] *Rollo*, pp. 248-249.

[7] *Id.* at 249.

[8] *Id.* at 250-251.

[9] *Id.* at 219; records, p. 54.

[10] Records, p. 54.

[11] *Id.* at 147; *rollo*, p.16.

Atty. Rodriguez and Siazar discussed was how the latter might be compensated if the company's plan went through. In response, Siazar even submitted a proposal that the company found excessive.[12]

On December 14, 1998 the Labor Arbiter found that the company did not yet dismiss Siazar from work[13] since they were still negotiating for a financial package for him. He rather stopped reporting for work of his own accord after learning of the plan to retrench him. Indeed, the company gave Siazar no letter of dismissal or retrenchment.[14] Consequently, the Labor Arbiter dismissed the complaint but ordered the company to give Siazar separation pay, his unpaid salary, and a proportionate 13th month pay for 1997.[15]

Siazar appealed to the NLRC, which ruled[16] on June 3, 1999 to uphold the Labor Arbiter's finding that the company did not dismiss him from work and that, misunderstanding its action, he ceased to report for work. It was all a misunderstanding, said the NLRC, and each party must bear his own loss to place them on equal footing.[17] The NLRC sustained the award of separation pay, to be reckoned from June 1996 to June 1997, the time Siazar worked for AISC. The NLRC also affirmed the grant to him of his unpaid salary and proportionate 13th month pay.[18] Siazar asked for reconsideration but the NLRC denied it.[19]

Not dissuaded, Siazar went up to the Court of Appeals (CA)[20] but on December 21, 2005[21] the latter court affirmed the NLRC

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[12] *Rollo*, p. 219.

[13] Records, pp. 198-208.

[14] *Id.* at 201-206.

[15] *Id.* at 207-208.

[16] Docketed as NLRC-NCR CA 018523-99, *rollo*, pp. 39-68.

[17] *Id.* at 54-58.

[18] *Id.* at 63.

[19] *Id.* at 66-68.

[20] Docketed as CA-G.R. SP 56228.

[21] *Rollo*, pp. 180-186. Penned by Associate Justice Danilo B. Pine, with Associate Justices Marina L. Buzon and Arcangelita M. Romilla-Lontok concurring.

decision. On motion for reconsideration, however, the CA rendered an Amended Decision[22] on December 13, 2006, finding sufficient evidence that the company indeed illegally dismissed Siazar from work. The CA based its finding on the following: (a) Rodriguez told Siazar that he had been terminated; (b) the company did not allow Siazar to enter its premises; (c) it wanted to close his department and retrench him from work; (d) Rodriguez asked Siazar to compute what he expected was to be his separation pay; (e) the company neither gave Siazar notice nor informed him of the reason for his dismissal; and (f) it showed no valid or just cause for the dismissal.

The CA thus ordered the company to reinstate Siazar and pay him full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time of his dismissal up to the time of his actual reinstatement.[23] The company filed a motion for reconsideration, but the CA denied the same on May 22, 2007,[24] hence the present petition for review on *certiorari*.

Issues Presented

Two issues are presented:

1. Whether or not the company dismissed Siazar from work; and
2. In the affirmative, whether or not his dismissal was valid.

Court's Ruling

The company insists that the Court should reinstate the original CA decision, given the findings of the Labor Arbiter and the NLRC that it had not dismissed Siazar.[25] Ordinarily, the Court

[22] *Id.* at 198-202. Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Marina L. Buzon and Martin S. Villarama, Jr. (now a member of this Court) concurring.

[23] *Id.* at 201.

[24] *Id.* at 238-239.

[25] *Id.* at 24-25.

will not, on petition for review on *certiorari*, reexamine the facts of the case. Here, however, since the CA overturned its earlier ruling and its factual findings now differ from those of the Labor Arbiter and the NLRC, the Court is making an exception.[26]

From an examination of the record, the Court has ascertained that the evidence supports the CA's finding that the company dismissed Siazar from work. This is evident from the following:

One. On company's orders, the guard prevented Siazar from entering its premises to work. The company even gave him notice not to report for work and instead told him to see the company's external counsel after two days. If the company had not yet decided to close down Siazar's department and wanted merely to explore that possibility with him,[27] it had no reason to require him to stay away from work in the meantime. Barring him from work simply meant that the company had taken away his right to continue working for it.

Two. It is simply preposterous for Siazar or any employee like him to just give up a job that paid ₱25,000.00 a month when, according to the company, it had not yet decided to carry out its plan and fire him.

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[26] *Aklan College, Inc. v. Enero*, G.R. No. 178309, January 27, 2009, 577 SCRA 64, 77-78. Factual findings are not reviewable by this Court in petitions for review on *certiorari*, unless the case falls under any of the following recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion: (4) When the judgment is based on a misapprehension of facts: (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial court: (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

[27] *Rollo*, p. 219.

Three. That Siazar lost no time in filing a complaint for illegal dismissal negates the notion that he voluntarily left or abandoned his job.[28] An employee who files a suit to claim his job back raises serious doubts that he even entertained the idea of leaving it in the first place.

Four. Despite Siazar's failure to show up for work, the company did not summon him back or ask him to explain his long absence. Normally, an employer would not stand by when an employee just stops coming to work as this would affect its business. That the company just sat by when Siazar did not come to work strengthens his contention that it had dismissed him. Further, the company failed to substantiate its claim that it reported Siazar's irregular behavior to the Department of Labor and Employment.[29] The Court cannot consider allegations that have not been proved.[30]

All these show that the company indeed terminated the services of Siazar. The question now is this: was his termination valid?

Here, the company did not adduce any evidence to prove that Siazar's dismissal had been for a just or authorized cause as in fact it had been its consistent stand that it did not terminate him and that he quit on his own. But given that the company dismissed Siazar and that such dismissal had remained unexplained, there can be no other conclusion but that his dismissal was illegal.[31]

The Court has held that, under Article 279 of the Labor Code, separation pay may be awarded to an illegally dismissed

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[28] *L.C. Ordoñez Construction v. Nicdao*, G.R. No. 149669, July 27, 2006, 496 SCRA 745, 758; *Harborview Restaurant v. Labro*, G.R. No. 168273, April 30, 2009, 587 SCRA 277, 282.

[29] Records, p. 55.

[30] *Cabalen Management Co., Inc. v. Quiambao*, G.R. No. 169494, March 14, 2007, 518 SCRA 342, 357.

[31] See: *EDI-Staffbuilders International, Inc. v. National Labor Relations Commission*, G.R. No. 145587, October 26, 2007, 537 SCRA 409, 430-432; *Seven Star Textile Company v. Dy*, G.R. No. 166846, January 24, 2007, 512 SCRA 486, 498.

employee in lieu of reinstatement when continued employment is no longer possible where, as in this case, the continued relationship between the employer and the employee is no longer viable due to strained relations between them[32] and reinstatement appears no longer practical due to the length of time that had since passed.[33]

In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to one month salary for every year of service[34] reckoned from the first day of employment until the finality of the decision.[35] Payment of separation pay is in addition to payment of backwages.[36] And if separation pay is awarded instead of reinstatement, backwages shall be computed from the time of illegal termination up to the finality of the decision.[37]

The separation pay in this case shall be reckoned from the time Siazar worked for AISC, from June 1996 until the finality of this decision. The Court could not hold AISC liable for his work with DHMI for lack of evidence that the latter was simply an alter ego of AISC and had been established to evade an existing obligation, justify a wrong, or protect a fraud.[38]

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[32] *Session Delights Ice Cream and Fast Foods v. The Honorable Court of Appeals*, G.R. No. 172149, February 8, 2010.

[33] *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507, citing *Velasco v. National Labor Relations Commission*, G.R. No. 161694, June 26, 2006, 492 SCRA 686, 699.

[34] *Macasero v. Southern Industrial Gases Philippines*, *supra* note 33; *Pangilinan v. Wellmade Manufacturing Corporation*, G.R. No. 149552, March 10, 2010.

[35] *Henlin Panay Company v. National Labor Relations Commission*, G.R. No. 180718, October 23, 2009, 604 SCRA 362, 371.

[36] *Macasero v. Southern Industrial Gases Philippines*, *supra* note 33.

[37] *RBC Cable Master System v. Baluyot*, G.R. No. 172670, January 20, 2009, 576 SCRA 668, 679; *General Milling Corporation v. Casio*, G.R. No. 149552, March 10, 2010.

[38] *Velarde v. Lopez, Inc.*, 464 Phil. 525, 537 (2004); *Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission*, G.R. Nos. 170689 & 170705, March 17, 2009, 581 SCRA 598, 616.

WHEREFORE, the Court *AFFIRMS* the Court of Appeals' Amended Decision dated December 13, 2006 and Resolution dated May 22, 2007 in CA-G.R. SP 56228 subject to the *MODIFICATION* that the liability for respondent Jueber P. Siazar's illegal dismissal shall be the sole liability of petitioner Agricultural and Industrial Supplies Corporation and that, in lieu of reinstatement with backwages, the latter shall pay Siazar (a) separation pay in the amount equivalent to one month pay for every year of service computed from June 1996 up to the finality of this decision; and (b) full backwages computed from the date of his illegal dismissal on June 17, 1997 up to the finality of the decision.

Let the records of this case be *REMANDED* to the Labor Arbiter for the proper computation of the awards.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. Nos. 179045-46. August 25, 2010]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SMART COMMUNICATION, INC.,** [*] *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; TAX REFUND; CLAIM THEREFOR MAY BE FILED BY THE WITHHOLDING AGENT.— Pursuant to [Sections 204 (c)

[*] Sometimes referred to as Smart Communications, Inc. in other parts of the records.

and 229 of the National Internal Revenue Code (NIRC)] the person entitled to claim a tax refund is the taxpayer. However, in case the taxpayer does not file a claim for refund, the withholding agent may file the claim. In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*, a withholding agent was considered a proper party to file a claim for refund of the withheld taxes of its foreign parent company. Pertinent portions of the Decision read: The term "taxpayer" is defined in our NIRC as referring to "any person subject to tax imposed by the Title [on Tax on Income]." It thus becomes important to note that under Section 53(c) of the NIRC, the withholding agent who is "required to deduct and withhold any tax" is made "personally liable for such tax" and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law. A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. **It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made "liable for tax" as not "subject to tax." By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.**

2. ID.; ID.; ID.; ID.; REASONS.— Petitioner, however, submits that this ruling applies only when the withholding agent and the taxpayer are related parties, *i.e.*, where the withholding agent is a wholly owned subsidiary of the taxpayer. We do not agree. Although such relation between the taxpayer and the withholding agent is a factor that increases the latter's legal interest to file a claim for refund, there is nothing in the decision to suggest

that such relationship is required or that the lack of such relation deprives the withholding agent of the right to file a claim for refund. Rather, what is clear in the decision is that a withholding agent has a legal right to file a claim for refund for two reasons. *First*, he is considered a "taxpayer" under the NIRC as he is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law. *Second*, as an agent of the taxpayer, his authority to file the necessary income tax return and to remit the tax withheld to the government impliedly includes the authority to file a claim for refund and to bring an action for recovery of such claim.

3. ID.; ID.; ID.; ID.; THE RIGHT OF A WITHHOLDING AGENT TO CLAIM A REFUND COMES WITH IT THE RESPONSIBILITY TO RETURN THE SAME TO THE PRINCIPAL TAXPAYER; RATIONALE.— [W]hile the withholding agent has the right to recover the taxes erroneously or illegally collected, he nevertheless has the obligation to remit the same to the principal taxpayer. As an agent of the taxpayer, it is his duty to return what he has recovered; otherwise, he would be unjustly enriching himself at the expense of the principal taxpayer from whom the taxes were withheld, and from whom he derives his legal right to file a claim for refund.

4. ID.; RP-MALAYSIA TAX TREATY; ROYALTIES; DEFINED; TAXED AT THE RATE OF 25% OF THE GROSS AMOUNT.— Under the RP-Malaysia Tax Treaty, the term royalties is defined as payments of any kind received as consideration for: "(i) the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, any copyright of literary, artistic or scientific work, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience; (ii) the use of, or the right to use, cinematograph films, or tapes for radio or television broadcasting." These are taxed at the rate of 25% of the gross amount.

5. ID.; ID.; BUSINESS PROFITS; TAXABLE ONLY IN THE CONTRACTING STATE, UNLESS THE ENTERPRISE CARRIES ON BUSINESS IN THE OTHER CONTRACTING

STATE THROUGH A PERMANENT ESTABLISHMENT.— Under the [RP-Malaysia Tax] Treaty, the "business profits" of an enterprise of a Contracting State is taxable only in that State, unless the enterprise carries on business in the other Contracting State through a permanent establishment.

6. ID.; ID.; ID.; ID.; PERMANENT ESTABLISHMENT, DEFINED; CASE AT BAR.— The term "permanent establishment" is defined as a fixed place of business where the enterprise is wholly or partly carried on. However, even if there is no fixed place of business, an enterprise of a Contracting State is deemed to have a permanent establishment in the other Contracting State if it carries on supervisory activities in that other State for more than six months in connection with a construction, installation or assembly project which is being undertaken in that other State. In the instant case, it was established during the trial that Prism does not have a permanent establishment in the Philippines. Hence, "business profits" derived from Prism's dealings with respondent are not taxable. The question is whether the payments made to Prism under the SDM, CM, and SIM Application agreements are "business profits" and not royalties.

7. ID.; NATIONAL INTERNAL REVENUE CODE; TAX REFUND; A REFUND OF THE ERRONEOUSLY WITHHELD ROYALTY TAXES FOR THE PAYMENTS PERTAINING TO THE CM AND SIM APPLICATION AGREEMENTS IS PROPER.— The provisions in the agreements are clear. Prism has intellectual property right over the SDM program, but not over the CM and SIM Application programs as the proprietary rights of these programs belong to respondent. In other words, out of the payments made to Prism, only the payment for the SDM program is a royalty subject to a 25% withholding tax. A refund of the erroneously withheld royalty taxes for the payments pertaining to the CM and SIM Application Agreements is therefore in order.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Kathryn Ang-Zarate & Imelda Maxima R. Tolentino for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The right of a withholding agent to claim a refund of erroneously or illegally withheld taxes comes with the responsibility to return the same to the principal taxpayer.

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to set aside the Decision[1] dated June 28, 2007 and the Resolution[2] dated July 31, 2007 of the Court of Tax Appeals (CTA) *En Banc*.

Factual Antecedents

Respondent Smart Communications, Inc. is a corporation organized and existing under Philippine law. It is an enterprise duly registered with the Board of Investments.

On May 25, 2001, respondent entered into three Agreements for Programming and Consultancy Services[3] with Prism Transactive (M) Sdn. Bhd. (Prism), a non-resident corporation duly organized and existing under the laws of Malaysia. Under the agreements, Prism was to provide programming and consultancy services for the installation of the Service Download Manager (SDM) and the Channel Manager (CM), and for the installation and implementation of Smart Money and Mobile Banking Service SIM Applications (SIM Applications) and Private Text Platform (SIM Application).

On June 25, 2001, Prism billed respondent in the amount of US$547,822.45, broken down as follows:

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[1] *Rollo*, pp. 47-71; penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez.

[2] *Id.* at 72-74.

[3] BIR records, pp. 63-9.

SDM Agreement	US$236,000.00
CM Agreement	296,000.00
SIM Application Agreement	15,822.45
Total	US$547,822.45[4]

Thinking that these payments constitute royalties, respondent withheld the amount of US$136,955.61 or ₱7,008,840.43,[5] representing the 25% royalty tax under the RP-Malaysia Tax Treaty.[6]

On September 25, 2001, respondent filed its Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F)[7] for the month of August 2001.

On September 24, 2003, or within the two-year period to claim a refund, respondent filed with the Bureau of Internal Revenue (BIR), through the International Tax Affairs Division (ITAD), an administrative claim for refund[8] of the amount of ₱7,008,840.43.

Proceedings before the CTA Second Division

Due to the failure of the petitioner Commissioner of Internal Revenue (CIR) to act on the claim for refund, respondent filed a Petition for Review[9] with the CTA, docketed as CTA Case No. 6782 which was raffled to its Second Division.

In its Petition for Review, respondent claimed that it is entitled to a refund because the payments made to Prism are not royalties[10]

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[4] *Id.* at 1.

[5] *Id.* at 3; see also *rollo*, p. 17; US$547,822.45 x 25% = US$136,955.61 x 51.176 = ₱7,008,840.43 *(Tax Base x Tax Rate = Final Withholding Tax (FWT) x Prevailing Exchange Rate = FWT remitted to the BIR)*

[6] The Agreement between the Government of the Republic of the Philippines and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed in Manila on April 27, 1982 and took effect on July 27, 1984.

[7] BIR records, p. 4.

[8] *Id.* at 105-96.

[9] CTA Second Division *rollo*, pp. 1-14, with Annexes.

[10] *Id.* at 10.

but "business profits,"[11] pursuant to the definition of royalties under the RP-Malaysia Tax Treaty,[12] and in view of the pertinent Commentaries of the Organization for Economic Cooperation and Development (OECD) Committee on Fiscal Affairs through the Technical Advisory Group on Treaty Characterization of Electronic Commerce Payments.[13] Respondent further averred that since under Article 7 of the RP-Malaysia Tax Treaty, "business profits" are taxable in the Philippines "only if attributable to a permanent establishment in the Philippines, the payments made to Prism, a Malaysian company with no permanent establishment in the Philippines,"[14] should not be taxed.[15]

On December 1, 2003, petitioner filed his Answer[16] arguing that respondent, as withholding agent, is not a party-in-interest to file the claim for refund,[17] and that assuming for the sake of argument that it is the proper party, there is no showing that the payments made to Prism constitute "business profits."[18]

Ruling of the CTA Second Division

In a Decision[19] dated February 23, 2006, the Second Division of the CTA upheld respondent's right, as a withholding agent, to file the claim for refund citing the cases of *Commissioner of Internal Revenue v. Wander Philippines, Inc.*,[20] *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*[21] and *Commissioner of Internal Revenue v. The Court of Tax Appeals.*[22]

[11] *Id.* at 11.
[12] *Id.* at 8.
[13] *Id.* at 8-10.
[14] *Id.* at 11.
[15] *Id.* at 12.
[16] *Id.* at 130-136.
[17] *Id.* at 132.
[18] *Id.*
[19] *Id.* at 341-367.
[20] 243 Phil. 717 (1988).
[21] G.R. No. 66838, December 2, 1991, 204 SCRA 377.
[22] G.R. No. 93901, February 11, 1992 (Minute Resolution).

However, as to the claim for refund, the Second Division found respondent entitled only to a partial refund. Although it agreed with respondent that the payments for the CM and SIM Application Agreements are "business profits,"[23] and therefore, not subject to tax[24] under the RP-Malaysia Tax Treaty, the Second Division found the payment for the SDM Agreement a royalty subject to withholding tax.[25] Accordingly, respondent was granted refund in the amount of ₱3,989,456.43, computed as follows:[26]

Particulars	Amount (in US$)
1. CM	296,000.00
2. SIM Application	15,822.45
Total	US$311,822.45

Particulars	Amount
Tax Base	US$311,822.45
Multiply by: Withholding Tax Rate	25%
Final Withholding Tax	US$ 77,955.61
Multiply by: Prevailing Exchange Rate	51.176
Tax Refund Due	₱3,989,456.43

The dispositive portion of the Decision of the CTA Second Division reads:

> WHEREFORE, premises considered, the instant petition is partially GRANTED. Accordingly, respondent Commissioner of Internal Revenue is hereby ORDERED to REFUND or ISSUE a TAX CREDIT CERTIFICATE to petitioner Smart Communications, Inc. in the amount of ₱3,989,456.43, representing overpaid final withholding taxes for the month of August 2001.
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> SO ORDERED.[27]

Both parties moved for partial reconsideration[28] but the CTA Second Division denied the motions in a Resolution[29] dated July 18, 2006.

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[23] CTA Second Division *rollo*, p. 362.

[24] *Id.* at 364.

[25] *Id.* at 358.

[26] *Id.* at 365.

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

[28] *Id.* at 372-381 for respondent; *id.* at 382-393 for petitioner.

[29] *Id.* at 430-435.

Ruling of the CTA En Banc

Unsatisfied, both parties appealed to the CTA *En Banc* by filing their respective Petitions for Review,[30] which were consolidated per Resolution[31] dated February 8, 2007.

On June 28, 2007, the CTA *En Banc* rendered a Decision affirming the partial refund granted to respondent. In sustaining respondent's right to file the claim for refund, the CTA *En Banc* said that although respondent "and Prism are unrelated entities, such circumstance does not affect the status of [respondent] as a party-in-interest [as its legal interest] is based on its direct and independent liability under the withholding tax system."[32] The CTA *En Banc* also concurred with the Second Division's characterization of the payments made to Prism, specifically that the payments for the CM and SIM Application Agreements constitute "business profits,"[33] while the payment for the SDM Agreement is a royalty.[34]

The dispositive portion of the CTA *En Banc* Decision reads:

WHEREFORE, the instant petition is hereby DISMISSED. Accordingly, the assailed Decision and Resolution are hereby AFFIRMED.

SO ORDERED.[35]

Only petitioner sought reconsideration[36] of the Decision. The CTA *En Banc*, however, found no cogent reason to reverse its Decision, and thus, denied petitioner's motion for reconsideration in a Resolution[37] dated July 31, 2007.

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[30] The Petition for Review filed by the CIR was docketed as CTA EB No. 206, while the Petition for Review filed by Smart was docketed as CTA EB No. 207.

[31] CTA *En Banc rollo* of C.T.A. EB No. 206, pp. 107-108.

[32] *Id.* at 171.

[33] *Id.* at 176-178.

[34] *Id.* at 180.

[35] *Id.* at 182.

[36] *Id.* at 194-204.

[37] *Id.* at 207-209.

Unfazed, petitioner availed of the present recourse.

Issues

The two issues to be resolved are: (1) whether respondent has the right to file the claim for refund; and (2) if respondent has the right, whether the payments made to Prism constitute "business profits" or royalties.

Petitioner's Arguments

Petitioner contends that the cases relied upon by the CTA in upholding respondent's right to claim the refund are inapplicable since the withholding agents therein are wholly owned subsidiaries of the principal taxpayers, unlike in the instant case where the withholding agent and the taxpayer are unrelated entities. Petitioner further claims that since respondent did not file the claim on behalf of Prism, it has no legal standing to claim the refund. To rule otherwise would result to the unjust enrichment of respondent, who never shelled-out any amount to pay the royalty taxes. Petitioner, thus, posits that the real party-in-interest to file a claim for refund of the erroneously withheld taxes is Prism. He cites as basis the case of *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*,[38] where it was ruled that the proper party to file a refund is the statutory taxpayer.[39] Finally, assuming that respondent is the proper party, petitioner counters that it is still not entitled to any refund because the payments made to Prism are taxable as royalties, having been made in consideration for the use of the programs owned by Prism.

Respondent's Arguments

Respondent, on the other hand, maintains that it is the proper party to file a claim for refund as it has the statutory and primary responsibility and liability to withhold and remit the taxes to the BIR. It points out that under the withholding tax system, the agent-payor becomes a payee by fiction of law because the law makes the agent personally liable for the tax arising from

[38] G.R. No. 173594, February 6, 2008, 544 SCRA 100.

[39] *Id.* at 112.

the breach of its duty to withhold. Thus, the fact that respondent is not in any way related to Prism is immaterial.

Moreover, respondent asserts that the payments made to Prism do not fall under the definition of royalties since the agreements are for programming and consultancy services only, wherein Prism undertakes to perform services for the creation, development or the bringing into existence of software applications solely for the satisfaction of the peculiar needs and requirements of respondent.

Our Ruling

The petition is bereft of merit.

Withholding agent may file a claim for refund

Sections 204(c) and 229 of the National Internal Revenue Code (NIRC) provide:

> Sec. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. – The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed **unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> xxx xxx xxx
>
> Sec. 229. Recovery of Tax Erroneously or Illegally Collected.– No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum

alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner;** but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

Pursuant to the foregoing, the person entitled to claim a tax refund is the taxpayer. However, in case the taxpayer does not file a claim for refund, the withholding agent may file the claim.

In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*,[40] a withholding agent was considered a proper party to file a claim for refund of the withheld taxes of its foreign parent company. Pertinent portions of the Decision read:

The term "taxpayer" is defined in our NIRC as referring to "any person subject to tax imposed by the Title [on Tax on Income]." It thus becomes important to note that under Section 53(c)[41] of the NIRC, the withholding agent who is "required to deduct and withhold any tax" is made "personally liable for such tax" and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.

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[40] *Supra* note 21 at 384-387.

[41] Now Section 57 of the National Internal Revenue Code.

A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. **It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made "liable for tax" as not "subject to tax." By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.**

In *Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue*, this Court pointed out that a withholding agent is in fact the agent both of the government and of the taxpayer, and that the withholding agent is not an ordinary government agent:

> "The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas the Commissioner and his deputies are not made liable by law."

If, as pointed out in *Philippine Guaranty*, **the withholding agent is also an agent of the beneficial owner of the dividends with respect to the filing of the necessary income tax return and with respect to actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such claim.** This implied authority is especially warranted where, as in the instant case, the withholding agent is the wholly owned subsidiary of the parent-stockholder and therefore, at all times, under the effective control of such parent-stockholder. In the circumstances of this case, it seems particularly unreal to deny the implied authority

of P&G-Phil. to claim a refund and to commence an action for such refund.

xxx xxx xxx

We believe and so hold that, under the circumstances of this case, P&G-Phil. is properly regarded as a "taxpayer" within the meaning of Section 309,[42] NIRC, and as impliedly authorized to file the claim for refund and the suit to recover such claim. (Emphasis supplied.)

Petitioner, however, submits that this ruling applies only when the withholding agent and the taxpayer are related parties, *i.e.*, where the withholding agent is a wholly owned subsidiary of the taxpayer.

We do not agree.

Although such relation between the taxpayer and the withholding agent is a factor that increases the latter's legal interest to file a claim for refund, there is nothing in the decision to suggest that such relationship is required or that the lack of such relation deprives the withholding agent of the right to file a claim for refund. Rather, what is clear in the decision is that a withholding agent has a legal right to file a claim for refund for two reasons. *First*, he is considered a "taxpayer" under the NIRC as he is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law. *Second*, as an agent of the taxpayer, his authority to file the necessary income tax return and to remit the tax withheld to the government impliedly includes the authority to file a claim for refund and to bring an action for recovery of such claim.

In this connection, it is however significant to add that while the withholding agent has the right to recover the taxes erroneously or illegally collected, he nevertheless has the obligation to remit the same to the principal taxpayer. As an agent of the taxpayer, it is his duty to return what he has recovered; otherwise, he would be unjustly enriching himself at the expense of the principal

[42] Now Section 204 (c) of the National Internal Revenue Code.

taxpayer from whom the taxes were withheld, and from whom he derives his legal right to file a claim for refund.

As to *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*[43] cited by the petitioner, we find the same inapplicable as it involves excise taxes, not withholding taxes. In that case, it was ruled that the proper party to question, or seek a refund of, an indirect tax "is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another."

In view of the foregoing, we find no error on the part of the CTA in upholding respondent's right as a withholding agent to file a claim for refund.

The payments for the CM and the SIM Application Agreements constitute "business profits"

Under the RP-Malaysia Tax Treaty, the term royalties is defined as payments of any kind received as consideration for: "(i) the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, any copyright of literary, artistic or scientific work, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience; (ii) the use of, or the right to use, cinematograph films, or tapes for radio or television broadcasting."[44] These are taxed at the rate of 25% of the gross amount.[45]

Under the same Treaty, the "business profits" of an enterprise of a Contracting State is taxable only in that State, unless the enterprise carries on business in the other Contracting State through a permanent establishment.[46] The term "permanent establishment" is defined as a fixed place of business where the

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[43] *Supra* note 38 at 112.

[44] RP-Malaysia Tax Treaty, Article 12, Paragraph 4(a).

[45] RP-Malaysia Tax Treaty, Article 12, Paragraph 2(b)(ii).

[46] Article 7

enterprise is wholly or partly carried on.[47] However, even if there is no fixed place of business, an enterprise of a Contracting State is deemed to have a permanent establishment in the other Contracting State if it carries on supervisory activities in that other State for more than six months in connection with a construction, installation or assembly project which is being undertaken in that other State.[48]

In the instant case, it was established during the trial that Prism does not have a permanent establishment in the Philippines. Hence, "business profits" derived from Prism's dealings with respondent are not taxable. The question is whether the payments made to Prism under the SDM, CM, and SIM Application agreements are "business profits" and not royalties.

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only on so much thereof as is attributable to that permanent establishment.

[47] Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term 'permanent establishment' means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The term 'permanent establishment' shall include especially:
   (a) a place of management;
   (b) a branch;
   (c) an office;
   (d) a factory;
   (e) a workshop;
   (f) a mine, an oil or gas well, a quarry or other place of extraction of natural resources including timber or other forest produce;
   (g) a farm or plantation;
   (h) building site or construction, installation or assembly project which exists for more than 6 months.

   xxx xxx xxx

[48] Article 5

xxx xxx xxx

Paragraph 1.3 of the Programming Services (Schedule A) of the SDM Agreement,[49] reads:

> 1.3 Intellectual Property Rights (IPR)
>
> The SDM shall be installed by PRISM, including the SDM Libraries, **the IPR of which shall be retained by PRISM**. PRISM, however, shall provide the Client the APIs for the SDM at no cost to the Client. The Client shall be permitted to develop programs to interface with the SDM or the SDM Libraries, using the related APIs as appropriate.[50] (Emphasis supplied.)

Whereas, paragraph 1.4 of the Programming Services (Schedule A) of the CM Agreement and paragraph 1.3 of the Programming Services (Schedule A) of the SIM Agreement provide:

> 1.4 Intellectual Property Rights (IPR)
>
> The **IPR of all components of the CM belong to the Client** with the exception of the following components, which are provided, without technical or commercial restraints or obligations:
>
> - ConfigurationException.java
> - DataStructures (DblLinkedListjava, DbIListNodejava, List EmptyException.java, ListFullException.java, ListNodeNotFoundException.java, QueueEmptyException.java, QueueFullException.java, QueueList.java, QueuListEx.java, and QueueNodeNotFoundException.java)

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4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if:
   (a) it carries on supervisory activities in that other State for more than 6 months in connection with a construction, installation or assembly project which is being undertaken in that other State; or
   (b) substantial equipment is in that other State being used or installed by, for or under contract with, the enterprise.

[49] BIR records, pp. 63-47.

[50] *Id.* at 49.

- FieldMappedObjeet.java
- LogFileEx.java
- Logging (BaseLogger.java and Logger.java)
- PrismGeneric Exception.java
- PrismGenericObject.java
- ProtocolBuilders/CIMD2(Alive.java, BaseMessageData. java, DeliverMessage.java, Login.java, Logout.java, Nack.java, SubmitMessage.java,
- TemplateManagement (FileTemplateDataBag.java, Template DataBag.java, TemplateManagerExBag.java, and TemplateParserExBag.java)
- TemplateManager.class
- TemplateServer.class
- TemplateServer$RequestThread.class
- Template Server_skel.class
- TemplateServer_stub.class
- TemplateService.class
- Prism Crypto Server module for PHP4[51]

xxx xxx xxx

1.3 Intellectual Property Rights (IPR)

The Client shall own the IPR for the Specifications and the Source Code for the SIM Applications. PRISM shall develop an executable compiled code (the "Executable Version") of the SIM Applications for use on the aSIMetric card which, however, shall only be for the Client's use. The Executable Version may not be provided by PRISM to any third [party] without the prior written consent of the Client. It is further recognized that the Client anticipates licensing the use of the SIM Applications, but it is agreed that no license fee will be charged to PRISM or to a licensee of

[51] *Id.* at 32.

> the aSIMetrix card from PRISM when SIMs are supplied to the Client.[52] (Emphases supplied.)

The provisions in the agreements are clear. Prism has intellectual property right over the SDM program, but not over the CM and SIM Application programs as the proprietary rights of these programs belong to respondent. In other words, out of the payments made to Prism, only the payment for the SDM program is a royalty subject to a 25% withholding tax. A refund of the erroneously withheld royalty taxes for the payments pertaining to the CM and SIM Application Agreements is therefore in order.

Indeed, the government has no right to retain what does not belong to it. "No one, not even the State, should enrich oneself at the expense of another."[53]

WHEREFORE, the petition is *DENIED.* The assailed Decision dated June 28, 2007 and the Resolution dated July 31, 2007 of the Court of Tax Appeals *En Banc* are hereby *AFFIRMED.* The Bureau of Internal Revenue is hereby *ORDERED* to *ISSUE* a TAX CREDIT CERTIFICATE to Prism Transactive (M) Sdn. Bhd. in the amount of ₱3,989,456.43 representing the overpaid final withholding taxes for the month of August 2001.

SO ORDERED.

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

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[52] *Id.* at 14.

[53] *BPI-Family Savings Bank, Inc. v. Court of Appeals,* 386 Phil. 719, 721 (2000).

THIRD DIVISION

[G.R. No. 179577. August 25, 2010]

VON MADARANG *Y* MONTEMAYOR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES ON MINOR OR TRIVIAL MATTERS ONLY SERVE TO STRENGTHEN RATHER WEAKEN THE CREDIBILITY OF WITNESSES FOR THEY ERASE THE SUSPICION OF REHEARSED TESTIMONY.—** Respecting petitioner's contention that the accounting inconsistency between the "Von Madarang accounts" and Teresita's testimony in open court creates reasonable doubt to merit his acquittal, the same does not lie. As the appellate court explained: Exhibit "E" ["Von Madarang account"] was never in conflict with the oral testimony of the complainant. During cross examination, she testified that included in the amount is the value of the marker and sticker worth ₱7,000.00 and ₱10,000.00 respectively. Though she failed to mention the item cash money worth ₱5,000.00, such failure does not affect the veracity of her testimony. Inconsistencies on minor or trivial matters only serve to strengthen rather than weaken the credibility of the witnesses for they erase the suspicion of rehearsed testimony. In fine, mere mathematical inaccuracy or error in the accounting document-basis of the amounts alleged to have been misappropriated in the Information does not engender doubt on petititoner's culpability, especially since the exact amount of his civil liability has been ascertained from the evidence adduced during the trial.

2. **CIVIL LAW; CONTRACTS; AGENCY; CONTRACT OF AGENCY, ESTABLISHED IN CASE AT BAR.—** Petitioner's claim that a partnership agreement between him and Teresita existed deserves scant consideration. SPA-Exh. "A" showing the existence of a contract of agency belies such claim.

APPEARANCES OF COUNSEL

Cabug-os & Ridao Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

On petition for review are the Court of Appeals May 24, 2007 Decision[1] and September 11, 2007 Resolution[2] affirming with modification the October 27, 2005 Decision of Branch 145 of the Regional Trial Court (RTC) of Makati in Criminal Case No. 03-2888 convicting Von Madarang (petitioner) of *Estafa* which is penalized under paragraph 1(b) of Article 315 of the Revised Penal Code (RPC).

Teresita Ramirez (Teresita), sole owner/proprietress of Makati-based T.E.R. Trading, a firm engaged in the business of supplying and selling Business Registration Aluminum Plates (registration plates), transacted business in certain towns of Isabela and Santiago City through the help of Cecilia Dy (Cecilia), the wife of then Isabela Governor Benjamin Dy.

Sometime in October 1997, Von Madarang *y* Montemayor (petitioner) whom Cecilia introduced to Teresita agreed to assist in the selling of registration plates at a price fixed by Teresita, the overprice to serve as his and Cecilia's commission.[3]

It appears that on petitioner's request, Teresita executed a Special Power of Attorney (SPA – Exh. "2-A")[4] which was notarized on January 20, 1998 authorizing petitioner as follows:

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with the concurrence of Associate Justices Vicente S.E. Veloso and Marlene Gonzales-Sison; CA *rollo*, pp. 72-81.

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

[3] TSN, April 22, 2004, p. 9.

[4] Records, p. 13.

1. To **collect payments** for BUSINESS REGISTRATION ALUMINUM PLATES Plus Stickers, size 5 x 9 Pt. 8 sold to the following municipalities:

   1. Municipality of Cordon, Isabela

   2. Municipality of Cauayan, Isabela

   3. Municipality of Ramon, Isabela

2. To accept and receive cash or checks as payments thereof and sign or issue our official receipts, or cash vouchers for such payments.

3. To cash or endorse checks or treasury warrants issued by the municipalities as payments or by the bank, payable to T.E.R. Trading. (emphasis and underscoring supplied)

It further appears that on petitioner's request, Teresita executed another SPA, also notarized on January 20, 1998 (SPA-Exh. "A"),[5] to include Santiago City as among the places from which petitioner could collect payments.

Based on Certifications[6] separately issued by Santiago City, Cordon and San Mateo, petitioner had collected full payments of registration plates sold there in the amounts of ₱345,600, ₱57,600 and ₱33,290.91, respectively. From Teresita's records denominated as the "Von Madarang Accounts,"[7] she noted that petitioner failed to remit ₱132,000 representing the balance of unremitted collections.[8]

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[5] *Id.* at 118.

[6] Exhibits "B" to "D", dated September 25, 2002 and May 19, 2003, respectively, *id.* at 119-121.

[7] Exhibit "E", *id.* at 122.

[8]

Cordon, Isabela	Php 35,000.00
San Mateo, Isabela	97,500.00
Santiago, Isabela	32,500.00
Total	Php 165,000.00

Her demands, the last for which was by letter of July 22, 2002,[9] for the remittance of petitioner's balance having remained unheeded, the Makati City Prosecutor's Office, on Teresita's complaint, filed before the Makati RTC an Information for Estafa against petitioner, the accusatory portion of which reads:

> That on or about the 20th day of February 1998, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, received in trust the sum of Php 132,000.00 with the obligation to deliver the same to complainant Teresita Ramirez, but the accused once in the possession of the said amount of Php 132,000.00, far from complying with his obligation, with abuse of confidence and with unfaithfulness, and with intent to defraud the said complainant, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to his own personal use and benefit the said amount of Php 132,000.00 and despite repeated demands, failed and refused and still fails and refuses to return the said amount, to the damage and prejudice to the said complainant in the aforementioned amount of Php 132,000.00.
>
> CONTRARY TO LAW.

Petitioner asserted that under SPA dated January 23 [*sic*], 1998 executed by Teresita (SPA-Exh. "1"),[10] he was under no obligation to remit the collections from Santiago City and San Mateo as his authority thereunder was to collect payments only from Cordon, Cauayan and Ramon.

Petitioner in fact claimed that he was not an agent, but a business partner of Teresita, thereby dispensing with the obligation to remit the collections from Santiago City, as well as from San Mateo, which represented his and Cecilia's share in the transactions.[11]

Brushing aside petitioner's claim that his authority was to collect payments only from Cordon, Cauayan and Ramon as SPA-Exh. "1" showed, the trial court noted that after Teresita executed SPA-Exh. "2-A"[12] which was notarized on January 20,

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[9] Exhibit "F", records, p. 123.

[10] Records, p. 160.

[11] TSN, June 23, 2005, pp. 4, 20-21.

[12] *Vide* note 4.

1998 authorizing petitioner to collect from Cordon, Cauayan and Ramon, she, on petitioner's request, subsequently executed SPA-Exh. "A", also notarized on January 20, 1998,[13] adding Santiago City to the places where petitioner was authorized to collect. Thus the trial court observed:

> On the other hand, the Special Power of Attorney offered in evidence by the accused as Exhibit "1" appears to be an original copy. A careful perusal of this document would show that item no. 4 which contained the words "Alicia, Isabela" was inserted by using a different typewriting machine from the one utilized in preparing the rest of the contents of the said Special Power of Attorney, thus, giving the impression that it was only an added item after the execution and notarization of the said Special Power of Attorney.
>
> In the light of this observation, the inference can be made that **initially, the private complainant executed a Special Power of Attorney [Exhibit "2-A"]** wherein she delegated to the accused as his agent the authority to collect the payments of the sale of the aforementioned items from the municipalities of **Cordon**, **Cauayan** and **Ramon**. Thereafter and as can be seen from the left hand margin of Exhibit "2-A" [page 13 of the records], a handwritten notation admitted to be that of accused (tsn. 6-23-05; p. 8] was made, which reads: "*Please include the city of Santiago*." Thus, to formalize and give more authenticity to this additional inclusion of the city of Santiago, the **private complainant executed another Special Power of Attorney** marked as **Exhibit "A"** which formalized the **inclusion of the city of Santiago** from where the accused can also collect the proceeds of the sale of the aforementioned business transactions.[14] (emphasis and underscoring supplied)

The trial court nevertheless credited petitioner's contention that any balance he owed Teresita was only ₱95,000,[15] and that such "mathematical inaccuracy ... will not result in serious doubt as to warrant the acquittal of the accused of the offense charged. . . ."[16]

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[13] *Vide* note 5.

[14] Records, pp. 331-332.

[15] ₱165,000 less payments of ₱70,000.

[16] *Infra* note 17 at 333.

By Decision[17] of October 27, 2005, the trial court thus convicted petitioner, disposing as follows:

> PREMISES CONSIDERED, judgment is rendered finding the accused Von Madarang *y* Montemayor GUILTY beyond reasonable doubt of the offense of Estafa defined under paragraph 1(b) of Article 315 of the Revised Penal Code, sentencing him to suffer an indeterminate term of imprisonment of four (4) years and two (2) months of *prision correccional* as minimum to thirteen (13) years and one (1) day of *reclusion temporal* as maximum, with all the accessory penalties provided for by law. He is likewise ordered to pay the private complainant Teresita Ramirez the amount of ₱95,000.00 with interest at the legal rate from the filing of the Information until fully paid pursuant to Article 2211 of the said Civil Code.
>
> With cost against the accused.
>
> SO ORDERED. (underscoring supplied)

At the Court of Appeals before which he appealed, petitioner assigned as main errors the trial court's non-recognition of: (1) Teresita's erroneous accounting and the existence of the conflicting SPAs (Exhs. "A", "1" and "2-A") which amounted to reasonable doubt to warrant his acquittal, and (2) the existence of a partnership between him and Teresita.[18]

The appellate court *affirmed* petitioner's conviction but *reduced* his unaccounted collections to ₱67,500 (₱32,500 from Santiago City plus ₱35,000 from Cordon) since San Mateo is not listed under SPA-Exh. "A" as one of those from which petitioner was authorized to collect payments. Thus, with the sum of ₱67,500 as basis for modifying the imposable penalty, the appellate court disposed:

> WHEREFORE, premises considered, the appeal is hereby DENIED. The assailed decision is AFFIRMED with MODIFICATION. Appellant is found guilty beyond reasonable doubt of the crime of *Estafa* sentencing him to suffer an indeterminate term of imprisonment of four (4) years and two (2) months of *prision correccional*, as minimum, to ten (10) years, eight (8) months and twenty one (21)

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[17] Rendered by Presiding Judge Cesar D. Santamaria; records, pp. 328-333.

[18] *Vide* Appellant's Brief, CA *rollo*, p. 27.

days of *prision mayor*, as maximum. Appellant is likewise ordered to pay private complainant Teresita Ramirez the amount of ₱67,500.00 as actual damages and to pay the costs.

SO ORDERED. (italics in the original)

Reconsideration having been denied by Resolution of September 11, 2007, petitioner filed the present petition invoking the same grounds as those raised before the appellate court.

Petitioner maintains that his authority was to collect payments only from Cordon, Cauayan and Ramon, hence, he was under no obligation to turn over the proceeds of collections from San Mateo and Santiago City.

The Court finds that, indeed, it is the prosecution's SPA-Exh. "A" which is the document-agreement of the parties. In observing that Exh. "1" could not, in effect, be relied upon, the trial court noted that while petitioner's SPA-Exh. "1" appears to be an "original copy," item no. 4 therein reading "Alicia, Isabela" bears a different typeset, indicating that it was intercalated through the use of a typewriter different from that used in the execution of SPA-Exh. "2-A".

Additionally, the Court observes that the blank space for the day when SPA-Exh. "1" was executed on January 1998 was filled up in handwriting to read "23." But such document was notarized on January 20, 1998, thus betraying petitioner's scheme.

As observed in the earlier-quoted portion of the trial court's decision, SPA-Exh. "A" appears to have been subsequently executed on January 20, 1998, the same day that SPA-"Exh. 2-A" was executed by Teresita, to "formalize" the written request of petitioner to include Santiago City as among the places from where petitioner could collect payments.

The Certifications[19] issued by Santiago City and Cordon clearly show that petitioner received collections from them. Since SPA-Exh. "A" does not authorize petitioner to collect from San Mateo, Teresita cannot demand from petitioner the remittance of

[19] Exhibits "B" and "C", *vide* note 6.

collections received therefrom by him. The appellate court's ruling that petitioner is duty bound to deliver only the amounts of ₱32,500 from Santiago City and ₱35,000 from Cordon is thus in order.

Respecting petitioner's contention that the accounting inconsistency between the "Von Madarang accounts" and Teresita's testimony in open court creates reasonable doubt to merit his acquittal, the same does not lie. As the appellate court explained:

> Exhibit "E" ["Von Madarang account"] was never in conflict with the oral testimony of the complainant. During cross examination, she testified that included in the amount is the value of the marker and sticker worth ₱7,000.00 and ₱10,000.00 respectively. Though she failed to mention the item cash money worth ₱5,000.00, such failure does not affect the veracity of her testimony. Inconsistencies on minor or trivial matters only serve to strengthen rather than weaken the credibility of the witnesses for they erase the suspicion of rehearsed testimony (*People vs. Santiago*, 420 SCRA 248; underscoring supplied)[20]

In fine, mere mathematical inaccuracy or error in the accounting document-basis of the amounts alleged to have been misappropriated in the Information does not engender doubt on appellant's culpability, especially since the exact amount of his civil liability has been ascertained from the evidence adduced during the trial.

Petitioner's claim that a partnership agreement between him and Teresita existed deserves scant consideration. SPA-Exh. "A" showing the existence of a contract of agency belies such claim.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

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[20] *Vide* note 1 at 76.

THIRD DIVISION

[G.R. No. 182010. August 25, 2010]

SUSAN ESQUILLO *Y* ROMINES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; LEGALITY OF ARREST; ANY OBJECTIONS THEREON MUST BE RAISED BEFORE ARRAIGNMENT.— Petitioner did not question early on her warrantless arrest – before her arraignment. Neither did she take steps to quash the Information on such ground. Verily, she raised the issue of warrantless arrest – as well as the inadmissibility of evidence acquired on the occasion thereof– for the first time only on appeal before the appellate court. By such omissions, she is deemed to have waived any objections on the legality of her arrest.

2. ID.; ID.; SEARCH AND SEIZURE; A SEARCH MAY BE CONDUCTED BY LAW ENFORCERS ONLY ON THE STRENGTH OF A VALID SEARCH WARRANT; EXCEPTIONS.— That a search may be conducted by law enforcers only on the strength of a valid search warrant is settled. The same, however, admits of exceptions, *viz*: (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.

3. ID.; ID.; ID.; WARRANTLESS SEARCH OR SEIZURE; DETERMINATION OF WHAT CONSTITUTES A REASONABLE OR UNREASONABLE SEARCH OR SEIZURE IS PURELY A JUDICIAL QUESTION.— In the instances where a warrant is not necessary to effect a valid search or seizure, the determination of what constitutes a reasonable or unreasonable search or seizure is purely a judicial question, taking into account, among other things, the uniqueness

of the circumstances involved including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.

4. ID.; ID.; ID.; ID.; "STOP-AND-FRISK" OPERATIONS; ELUCIDATED; CASE AT BAR.— Elucidating on what includes "stop-and-frisk" operation and how it is to be carried out, the Court in *People v. Chua* held: **. . . the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband. The police officer should properly introduce himself and make initial inquiries, approach and restrain a person who manifests unusual and suspicious conduct, in order to check the latter's outer clothing for possibly concealed weapons. The apprehending police officer must have a genuine reason, in accordance with the police officer's experience and the surrounding conditions, to warrant the belief that the person to be held has weapons (or contraband) concealed about him.** It should therefore be emphasized that a search and seizure should precede the arrest for this principle to apply. This principle of "stop-and-frisk" search was invoked by the Court in *Manalili v. Court of Appeals*. In said case, the policemen chanced upon the accused who had reddish eyes, walking in a swaying manner, and who appeared to be high on drugs. Thus, we upheld the validity of the search as akin to a "stop-and-frisk." In *People v. Solayao*, we also found justifiable reason to "stop-and-frisk" the accused after considering the following circumstances: the drunken actuations of the accused and his companions, the fact that his companions fled when they saw the policemen, and the fact that the peace officers were precisely on an intelligence mission to verify reports that armed persons w[h]ere roaming the vicinity. What is, therefore, essential is that a genuine reason must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person who manifests unusual suspicious conduct has weapons or contraband concealed about him. Such a "stop-and-frisk" practice serves a dual purpose: (1) **the general interest of effective crime prevention and detection, which underlies the recognition that a police officer may, under appropriate circumstances and in an appropriate manner, approach a person for purposes of**

investigating possible criminal behavior even without probable cause; and (2) the more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the person with whom he deals is not armed with a deadly weapon that could unexpectedly and fatally be used against the police officer. From these standards, the Court finds that the questioned act of the police officers constituted a valid "stop-and-frisk" operation. The search/seizure of the suspected *shabu* initially noticed in petitioner's possession — later voluntarily exhibited to the police operative — was undertaken after she was interrogated on what she placed inside a cigarette case, and after PO1 Cruzin introduced himself to petitioner as a police officer. And, at the time of her arrest, petitioner was exhibiting suspicious behavior and in fact attempted to flee after the police officer had identified himself.

5. ID.; EVIDENCE; FRAME-UP; WHEN TO PROSPER AS A DEFENSE.— Courts have tended to look with disfavor on claims of accused, such as those of petitioner's, that they are victims of a frame-up. The defense of frame-up, like alibi, has been held as a shop-worn defense of the accused in drug-related cases, the allegation being easily concocted or contrived. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption of regularity of official acts of government officials. This it failed to do.

6. ID.; ID.; ABSENT ANY PROOF OF ILL MOTIVE, PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY AND FINDINGS OF THE TRIAL COURT WITH RESPECT TO CREDIBILITY OF WITNESSES PREVAIL.— Absent any proof of motive to falsely accuse petitioner of such a grave offense, the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of witnesses prevail over that of petitioner.

7. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); POSSESSION OF DANGEROUS DRUGS; PROPER PENALTY, EXPLAINED.— While the appellate court affirmed the trial court's decision, it overlooked the error in the penalty imposed by the trial court. The trial court, applying the provisions of the Indeterminate Sentence Law, sentenced petitioner to "suffer

the penalty of imprisonment ranging from Eight (8) years and One (1) day, as minimum, to Fourteen (14) years, Eight (8) months and One (1) day, as maximum." Article II, Section 11 of R.A. No. 9165 provides, however: Section 11. Possession of Dangerous Drugs. x x x Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows: x x x (3) **Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000) to Four hundred thousand pesos (₱400,000), 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, **metamphetamine hydrochloride or** "***shabu***" or other dangerous drugs such as, but not limited to MDMA or "ecstacy," PMA, TMA, LSD, GHB and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possesses is far behind therapeutic requirements; or less than three hundred (300) grams of marijuana. Section 1 of the Indeterminate Sentence Law provides that when the offense is punished by a law other than the Revised Penal Code, "the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term prescribed by the same." The prayer of the Office of the Solicitor General for a modification of the penalty is thus in order. The Court, therefore, imposes on petitioner the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum.

BERSAMIN, *J., dissenting opinion:*

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; FAILURE TO OBJECT TO THE IRREGULARITY OF AN ARREST PRIOR TO THE ARRAIGNMENT DOES NOT INVOLVE A WAIVER OF THE INADMISSIBILITY OF THE EVIDENCE.— The failure to object to the irregularity of an arrest prior to the arraignment does not involve a waiver of the inadmissibility of the evidence. It only amounts to a submission to the jurisdiction of the trial court. The Court said so in several decisions, including *People v. Lapitaje*, *viz:*

A waiver of an illegal warrantless arrest does not also mean a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest. The following searches and seizures are deemed permissible by jurisprudence: (1) search of moving vehicles (2) seizure in plain view (3) customs searches (4) waiver or consent searches (5) stop and frisk situations (Terry Search) and (6) search incidental to a lawful arrest. The last includes a valid warrantless search and seizure pursuant to an equally valid warrantless arrest, for, while as a rule, an arrest is considered legitimate if effected with a valid warrant of arrest, the Rules of Court recognize permissible warrantless arrests, to wit: (1) arrests *in flagrante delicto*, (2) arrests effected in hot pursuit, and, (3) arrests of escaped prisoners.

2. ID.; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; WARRANTLESS SEARCHES AND SEIZURES; STOP-AND-FRISK PRINCIPLE; ELUCIDATED; NO APPLICATION IN CASE AT BAR.— I believe that the CA gravely erred in appreciating the factual situation of the search. The stop-and-frisk principle did not apply. The CA confused the stop-and-frisk principle with a search as incidental to a lawful arrest. The Court must correct the CA's error and confusion. In *Terry v. Ohio*, circa 1968, the United States Supreme Court allowed a *limited protective search* of outer clothing for weapons, where a police officer observes *unusual conduct* that leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the person with whom he is dealing *may be* armed and *presently* dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and *where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety*. Such permissible limited protective search is for the *only* purpose of enabling the officer to protect himself and others in the area, and is now known famously as the *Terry* stop-and-frisk. A *Terry* stop-and-frisk is an exception to the constitutional requirement for a judicial warrant as a prerequisite to a valid arrest and search. It is entirely different from and should not be confused with a search incidental to a lawful arrest envisioned under Section 13, Rule 126, 2001 *Rules of Criminal Procedure*. Although it did not expressly state so, the CA labored under

the confused view that one and the other were indistinct and identical. That confused view guided the CA to wrongly affirm the petitioner's unfortunate conviction.

3. ID.; ID.; ID.; ID.; STOP-AND-FRISK SEARCH; DISTINGUISHED FROM SEARCH INCIDENTAL TO A LAWFUL ARREST.— We should now reverse the CA, not affirm its error, for it is necessary to remind the trial court and the CA that the stop-and-frisk search is entirely different from the search incidental to a lawful arrest. The distinctions have been made clear in *Malacat v. Court of Appeals*: xxx the trial court confused the concepts of a "stop-and-frisk" and of a search incidental to a lawful arrest. **These two types of warrantless searches differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope**. **In a search incidental to a lawful arrest, as the precedent arrest determines the validity of the incidental search, the legality of the arrest is questioned in a large majority of these cases, *e.g.*, whether an arrest was merely used as a pretext for conducting a search. In this instance, the law requires that there first be arrest before a search can be made—the process cannot be reversed. At bottom, assuming a valid arrest, the arresting officer may search the person of the arrestee and the area within which the latter may reach for a weapon or for evidence to destroy, and seize any money or property found which was used in the commission of the crime, or the fruit of the crime, or that which may be used as evidence, or which might furnish the arrestee with the means of escaping or committing violence**.

4. ID.; ID.; ID.; ID.; ID.; GENUINE REASON TO BELIEVE REQUIRED FOR A TERRY PROTECTIVE SEARCH NEED NOT AMOUNT TO OR EQUATE TO PROBABLE CAUSE; EXPLAINED.— [A] *Terry* protective search is *strictly limited* to what is necessary for the discovery of weapons that may be used to harm the officer of the law or others nearby. There must then be a genuine reason to believe that the accused is armed and presently dangerous. Being an exception to the rule requiring a search warrant, a *Terry* protective search is strictly construed; hence, it cannot go beyond what is necessary to determine if the suspect is armed. Anything beyond is no longer

valid and the fruits of the search will be suppressed. Moreover, the genuine reason to believe required for a *Terry* protective search need not amount or equate to probable cause, which infers that an offense is being committed or has been committed. If the reason amounts to probable cause, the officer can already validly effect an *outright* warrantless arrest, and his ensuing search will not be limited to a merely protective one for weapons but will be *for anything related to the offense being committed or has been committed*. Such a search is one incidental to a lawful arrest. What may be regarded as reasonable suspicion justifying a *Terry* stop-and-frisk search in this jurisdiction has been illustrated in two cases. In *Manalili v. Court of Appeals*, specially trained policemen saw Manalili with reddish eyes walking in a wobbly manner characteristic of a person on drugs in a known hangout of drug users. In *People v. Solayao*, the Court found the drunken actuations of the accused and his companions as justifiable reason to conduct stop-and-frisk on them after considering the following circumstances: (*a*) the fact that his companions fled when they saw the policemen, and *(b*) the fact that the peace officers were precisely on an intelligence mission to verify reports that armed persons were roaming in the vicinity. The common thread of these examples is the presence of *more than one* seemingly innocent activity, which, taken together, warranted a reasonable inference of criminal activity. *It was not so in this case*.

5. ID.; ID.; ID.; ID.; ID.; ID.; TEST FOR THE EXISTENCE OF REASONABLE SUSPICION THAT A PERSON IS ENGAGED IN CRIMINAL ACTIVITY IS THE TOTALITY OF THE CIRCUMSTANCES, VIEWED THROUGH THE EYES OF A REASONABLE, PRUDENT POLICE OFFICER; CASE AT BAR.— For purposes of a valid *Terry* stop-and-frisk search, the test for the existence of reasonable suspicion that a person is engaged in criminal activity is the totality of the circumstances, viewed through the eyes of a reasonable, prudent police officer. Yet, the totality of the circumstances described by PO1 Cruzin did not suffice to engender *any* reasonable suspicion in his mind. The petitioner's act, without more, was an innocuous movement, absolutely not one to give rise in the mind of an experienced officer to *any belief* that she had any weapon concealed about her, or that she was probably

committing a crime in the presence of the officer. Neither should her act and the surrounding circumstances engender any reasonable suspicion on the part of the officer that a criminal activity was afoot. We should bear in mind that the Court has frequently struck down the arrest of individuals whose overt acts did not transgress the penal laws, or were wholly innocent.

6. ID.; ID.; ID.; ID.; ID.; ID.; ID.; DUAL INQUIRY IS NECESSARY; NOT SUCCESSFULLY MET IN CASE AT BAR.— If the reasonableness of a *Terry* stop and search is tested in the light of the totality of the circumstances in each case, a *dual inquiry* is necessary: whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances, which justified the interference in the first place. Here, however, the dual inquiry was not successfully met. The police officers were not even surveying the area of arrest for the presence of drug violators. Neither did they have any informant's tip that the area was a known place for drug users or drug pushers. Considering that they were not even shown to have been specially trained to determine and identify *shabu* from a distance, the only acceptable conclusion to be reached is that PO1 Cruzin had no reasonable suspicion about any illegal or criminal activity on the part of the petitioner. In fact, he admitted that only his curiosity had prompted him to approach her in order to "inquire" about the content of the plastic sachet. PO1 Cruzin's curiosity did not equate to a reasonable suspicion sufficient to justify his intrusion upon the person of the petitioner, even assuming that he had a sense that the content was white crystalline substance. We all know that *shabu* was not the only white crystalline substance easily available, for other items very similar in appearance, like *tawas* or chlorine bleach, could also be packed in a similar plastic sachet. With that, he had absolutely no justification for his intrusion. Relevantly, it is observed that the majority do not categorically state what the suspicious behavior of the petitioner was.

7. ID.; ID.; ID.; ID.; ID.; ID.; ID.; FLIGHT ALONE IS NOT BASIS FOR ANY REASONABLE SUSPICION THAT CRIMINAL ACTIVITY IS A FOOT TO JUSTIFY AN INVESTIGATORY STOP.— PO1 Cruzin's restraining of the petitioner because she *attempted* to flee as he approached her was not also

legitimate or reasonable. Flight alone was no basis for any reasonable suspicion that criminal activity was afoot. Indeed, a person's flight cannot immediately justify an investigatory stop, for even in high crime areas there are many innocent reasons for flight, including fear of retribution for speaking to officers, unwillingness to appear as witnesses, and fear of being wrongfully apprehended as a guilty party. At any rate, the Court has said in *Valdez v. People*: Flight *per se* is not synonymous with guilt and must not always be attributed to one's consciousness of guilt. Of persuasion was the Michigan Supreme Court when it ruled in *People v. Shabaz* that "[f]light alone is not a reliable indicator of guilt without other circumstances because flight alone is inherently ambiguous." Alone, and under the circumstances of this case, petitioner's flight lends itself just as easily to an innocent explanation as it does to a nefarious one. I contend, therefore, that contrary to the CA's dangerous position the purpose of the *Terry* dictum – *to enable the officer to discover weapons that may be used to harm him or others nearby* – forbids any overindulgence in stopping and searching persons who have given no indication of impending criminal activity. Such purpose really delineates a boundary for *all* stop-and-frisk situations that limits the search to the person's *outer clothing*, subject to the officer having a genuine reason, in light of his and the surrounding conditions, to warrant the belief that the person detained has weapons concealed about him. Any search done beyond the boundary cannot be justified as a valid stop-and-frisk under *Terry*, for it cannot be a *limited protective search*, or a *preventive measure*, or an *act of self-preservation* against a potentially dangerous criminal from harming the officer and others.

8. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO PRIVACY AND PERSONAL SECURITY; EXCLUSIONARY RULE; APPLICATION IN CASE AT BAR.— [W]e should exclude the evidence then seized from the petitioner, for that is the only way by which the Court can effectively enforce the guarantee of the Bill of Rights to her right to privacy and personal security expressed under its Section 2, *supra*. The exclusionary rule is embodied in Section 3 of the Bill of Rights, thus: Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order

requires otherwise as prescribed by law. **(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding**. The eminent Justice Frankfurter observed in *Walder v. United States* that the application of the exclusionary rule and the invalidation of the conviction were necessary to prevent the State from profiting from its agents' stark violation of this important constitutional right, thus: The Government cannot violate the Fourth Amendment – in the only way in which the Government can do anything, namely through its agents – and use the fruits of such unlawful conduct to secure a conviction. *Weeks v. United States* (US) *supra*. Nor can the Government make indirect use of such evidence for its case, *Silverthorne Lumber Co. v. United States*, 251 US 385, 64 L ed 319, 40 S Ct 182, 24 ALR 1426, or support a conviction on evidence obtained through leads from the unlawfully obtained evidence, *cf. Nardone v. United States*, 308 US 338, 84 L ed 307, 60 S Ct 266. **All these methods are outlawed, and convictions obtained by means of them are invalidated, because they encourage the kind of society that is obnoxious to free men**.

9. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; WARRANTLESS SEARCHES AND SEIZURES; PLAIN VIEW DOCTRINE; AN OFFICER CAN LAWFULLY SEIZE CONTRABAND THAT SHOULD COME INTO VIEW IN THE COURSE OF A JUSTIFIED STOP-AND-FRISK OR PAT-DOWN SEARCH.— I hasten to clarify that the officer can lawfully seize contraband that should come into view in the course of a *justified* stop-and-frisk or pat-down search, and the contraband will be admissible in evidence. The justification in such a situation is the plain view doctrine.

APPEARANCES OF COUNSEL

Feranculo Evora Askali Recto Law Firm for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Via petition erroneously captioned as one for *Certiorari*, Susan Esquillo *y* Romines (petitioner) challenges the November 27, 2007 Decision[1] of the Court of Appeals in CA-G.R. CR No. 27894 which *affirmed* the July 28, 2003 Decision of Branch 116 of the Regional Trial Court (RTC) of Pasay City in Criminal Case No. 02-2297 convicting Susan Esquillo *y* Romines (petitioner) for violating Section 11, Article II of Republic Act (R.A.) No. 9165 (the *Comprehensive Dangerous Drugs Act of 2002*) – possession of methamphetamine hydrochloride or *shabu*.

The accusatory portion of the Information dated December 12, 2002 indicting petitioner reads:

> That on or about the 10th day of December, 2002 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in her possession, custody and control 0.1224 gram of Methylamphetamine Hydrochloride (*shabu*).[2] (underscoring supplied)

At the trial, petitioner admitted the genuineness and due execution of the documentary evidence of the prosecution, particularly the Dangerous Drugs and Toxicology Reports issued by National Bureau of Investigation (NBI) Forensic Chemist Antonino de Belen (de Belen),[3] subject to her defenses, to thus dispense with the testimony of de Belen.

De Belen recorded the results of the laboratory examination of the contents of the sachet in Dangerous Drugs Report No. DD-02-613,[4] *viz*:

xxx xxx xxx

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[1] Penned by Associate Justice Ricardo R. Rosario, with the concurrence of Associate Justices Rebecca De Guia-Salvador and Magdangal M. De Leon; CA *rollo*, pp. 108-116.

[2] Records, p. 5.

[3] TSN, May 5, 2003, pp. 2-8.

[4] *Vide* Exhibit "C", records, p. 116.

SPECIMEN:

White crystalline substance contained in a heat-sealed transparent plastic sachet marked "SRE" and further placed in bigger marked transparent plastic sachet.

xxx xxx xxx

F I N D I N G S:

Net Weight of specimen = 0.1224 gram

Examinations conducted on the above-mentioned specimen gave **POSITIVE** RESULTS for METHAMPHETAMINE HYDROCHLORIDE, a dangerous drug. x x x

xxx xxx xxx (emphasis and underscoring supplied)

With respect to the examination of the urine of petitioner, de Belen recorded the results thereof in Toxicology Report No. TDD-02-4128[5] reading:

xxx xxx xxx

SPECIMEN:

Urine of one SUSAN ESQUILLO *Y* ROMINES. 37 y/o, married, jobless, of no. 1159 Bo. Bayanihan, Maricaban, Pasay City.

xxx xxx xxx

F I N D I N G S:

Volume of urine	=	60 mL.
pH of urine	=	5.0
Appearance	=	yellow orange, turbid

Examinations conducted on the above-mentioned specimen gave **POSITIVE** RESULTS for the presence of METHAMPHETAMINE HYDROCHLORIDE, and its metabolite AMPHETAMINE. x x x

xxx xxx xxx (emphasis and underscoring supplied)

Based on its documentary evidence and the testimony of PO1 Alvin Cruzin (PO1 Cruzin),[6] a member of the Pasay City

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[5] *Vide* Exhibit "D", *id.* at 117.

[6] TSN, May 29, 2003, pp. 2-19.

Police Station Special Operations Group (SOG), the prosecution established its version as follows:

On the basis of an informant's tip, PO1 Cruzin, together with PO2 Angel Aguas (PO2 Aguas), proceeded at around 4:00 p.m. on December 10, 2002 to Bayanihan St., Malibay, Pasay City to conduct surveillance on the activities of an alleged notorious snatcher operating in the area known only as "Ryan."

As PO1 Cruzin alighted from the private vehicle that brought him and PO2 Aguas to the target area, he glanced in the direction of petitioner who was standing three meters away and seen placing inside a yellow cigarette case what appeared to be a small heat-sealed transparent plastic sachet containing white substance. While PO1 Cruz was not sure what the plastic sachet contained, he became suspicious when petitioner started acting strangely as he began to approach her. He then introduced himself as a police officer to petitioner and inquired about the plastic sachet she was placing inside her cigarette case. Instead of replying, however, petitioner attempted to flee to her house nearby but was timely restrained by PO1 Cruzin who then requested her to take out the transparent plastic sachet from the cigarette case.

After apprising petitioner of her constitutional rights, PO1 Cruzin confiscated the plastic sachet[7] on which he marked her initials "SRE." With the seized item, petitioner was brought for investigation to a Pasay City Police Station where P/Insp. Aquilino E. Almanza, Chief of the Drug Enforcement Unit, prepared a memorandum[8] dated December 10, 2002 addressed to the Chief Forensic Chemist of the NBI in Manila requesting for: 1) a laboratory examination of the substance contained in the plastic sachet to determine the presence of *shabu*, and 2) the conduct of a drug test on the person of petitioner. PO1 Cruzin and PO2 Aguas soon executed a Joint Affidavit of Apprehension[9] recounting

[7] Exhibit "A-1-a".

[8] Exhibits "A" and "B", records, pp. 114-115.

[9] Exhibits "E" to "E-2", *id.* at 118.

the details of their intended surveillance and the circumstances leading to petitioner's arrest.

Repudiating the charges, petitioner[10] gave the following tale:

At around 1:00 to 2:00 p.m. of the date in question, while she was sick and resting at home, several policemen in civilian garb with guns tucked in their waists barged in and asked her whether she knew one named "Ryan" who they claimed was a notorious snatcher operating in the area, to which she replied in the negative. The police officers then forced her to go with them to the Pasay City Police Station-SOG office where she was detained.

While she was under detention, the police officers were toying with a wallet which they claimed contained *shabu* and recovered from her.

In fine, petitioner claimed that the evidence against her was "planted," stemming from an all too obvious attempt by the police officers to extort money from her and her family.

Two other witnesses for the defense, petitioner's daughter Josan Lee[11] and family friend Ma. Stella Tolentino,[12] corroborated petitioner's account. They went on to relate that the police officers never informed them of the reason why they were taking custody of petitioner.

By Decision[13] of July 28, 2003, the trial court found petitioner guilty of illegal possession of Methylamphetamine Hydrochloride or *shabu*, disposing as follows:

WHEREFORE, in light of the foregoing premises and considerations, this Court hereby renders judgment finding the accused Susan Esquillo *y* Romines GUILTY beyond reasonable doubt of the crime of Violation of par. 3 of Section 11, Article II of R. A. 9165,

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[10] TSN, June 24, 2003, pp. 19-29.

[11] TSN, June 19, 2003, pp. 2-10.

[12] TSN, June 24, 2003, pp. 2-18.

[13] Rendered by Judge Eleuterio F. Guerrero; records, pp. 143-150.

otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and absent any modifying circumstance to either aggravate or mitigate the criminal liability of the same accused, and furthermore, applying the provisions of the Indeterminate Sentence Law, the same accused is hereby sentenced to suffer the penalty of imprisonment ranging from Eight (8) years and One (1) day, as minimum, to Fourteen (14) years, Eight (8) months and One (1) day, as maximum, and to pay a fine of ₱350,000.00, Philippine Currency, plus costs.

The 0.1224 gram of Methylamphetamine Hydrochloride or "*Shabu*" involved in this case is declared forfeited in favor of the Government and ordered to be turned over to the Philippine Drug Enforcement Agency (PDEA) for proper and appropriate disposition in accordance with the provisions of the law.[14] (underscoring supplied)

Before the Court of Appeals, appellant questioned as illegal her *arrest* without warrant to thus render any evidence obtained on the occasion thereof inadmissible.

In its challenged Decision affirming petitioner's conviction, the appellate court, citing *People v. Chua*,[15] held that the police officers had probable cause to search petitioner under the "stop-and-frisk" concept, a recognized exception to the general rule prohibiting warrantless searches.[16]

Brushing aside petitioner's defense of frame-up, the appellate court noted that petitioner failed to adduce evidence that the arresting officers were impelled by any evil motive to falsely charge her, and that she was even found positive for substance abuse.

In her present petition, petitioner assails the appellate court's application of the "stop-and-frisk" principle in light of PO1 Cruzin's failure to justify his suspicion that a crime was being committed, he having merely noticed her placing something inside a cigarette case which could hardly be deemed suspicious. To

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[14] *Id.* at 150.

[15] G.R. Nos. 136066-67, February 4, 2003, 396 SCRA 657.

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

petitioner, such legal principle could only be invoked if there were overt acts constituting unusual conduct that would arouse the suspicion.[17]

Respondent, through the Office of the Solicitor General, prays for the affirmance of the appealed decision but seeks a modification of the penalty to conform to the pertinent provisions of R.A. No. 9165.

Appellant's conviction stands.

Petitioner did not question early on her warrantless arrest – before her arraignment. Neither did she take steps to quash the Information on such ground. Verily, she raised the issue of warrantless arrest – as well as the inadmissibility of evidence acquired on the occasion thereof– for the first time only on appeal before the appellate court.[18] By such omissions, she is deemed to have waived any objections on the legality of her arrest.[19]

Be that as it may, the circumstances under which petitioner was arrested indeed engender the belief that a search on her was warranted. Recall that the police officers were on a surveillance operation as part of their law enforcement efforts. When PO1 Cruzin saw petitioner placing a plastic sachet containing white crystalline substance into her cigarette case, it was in his plain view. Given his training as a law enforcement officer, it was instinctive on his part to be drawn to curiosity and to approach her. That petitioner reacted by attempting to flee after he introduced himself as a police officer and inquired about the contents of the plastic sachet all the more pricked his curiosity.

That a search may be conducted by law enforcers only on the strength of a valid search warrant is settled. The same, however, admits of exceptions, *viz*:

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[17] *Rollo*, pp. 18-22.

[18] CA *rollo*, pp. 54-59.

[19] *People v. Kimura*, G.R. No. 130805, April 27, 2004, 428 SCRA 51, 61 citing *People v. Lagarto*, 326 SCRA 693, 749 (2000); *People v. Timon*, 281 SCRA 579, 597 (1997).

(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.[20] (emphasis underscoring supplied)

In the instances where a warrant is not necessary to effect a valid search or seizure, the determination of what constitutes a reasonable or unreasonable search or seizure is purely a judicial question, taking into account, among other things, the uniqueness of the circumstances involved including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.[21]

Elucidating on what includes "stop-and-frisk" operation and how it is to be carried out, the Court in *People v. Chua*[22] held:

. . . the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband. The police officer should properly introduce himself and make initial inquiries, approach and restrain a person who manifests unusual and suspicious conduct, in order to check the latter's outer clothing for possibly concealed weapons. The apprehending police officer must have a genuine reason, in accordance with the police officer's experience and the surrounding conditions, to warrant the belief that the person to be held has weapons (or contraband) concealed about him. It should therefore be emphasized that a search and seizure should precede the arrest for this principle to apply.

This principle of "stop-and-frisk" search was invoked by the Court in *Manalili v. Court of Appeals*. In said case, the policemen chanced upon the accused who had reddish eyes, walking in a swaying manner,

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[20] *People v. Agulay*, G.R. No. 181747, September 26, 2008, 566 SCRA 571, 594.

[21] *People v. Nuevas*, G.R. No. 170233, February 22, 2007, 516 SCRA 463, 476.

[22] *Supra*, note 15.

and who appeared to be high on drugs. Thus, we upheld the validity of the search as akin to a "stop-and-frisk." In *People v. Solayao*, we also found justifiable reason to "stop-and-frisk" the accused after considering the following circumstances: the drunken actuations of the accused and his companions, the fact that his companions fled when they saw the policemen, and the fact that the peace officers were precisely on an intelligence mission to verify reports that armed persons w[h]ere roaming the vicinity. (emphasis and underscoring supplied; citations omitted)

What is, therefore, essential is that a genuine reason must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person who manifests unusual suspicious conduct has weapons or contraband concealed about him. Such a "stop-and-frisk" practice serves a dual purpose: (1) **the general interest of effective crime prevention and detection, which underlies the recognition that a police officer may, under appropriate circumstances and in an appropriate manner, approach a person for purposes of investigating possible criminal behavior even without probable cause;** and (2) the more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the person with whom he deals is not armed with a deadly weapon that could unexpectedly and fatally be used against the police officer.[23]

From these standards, the Court finds that the questioned act of the police officers constituted a valid "stop-and-frisk" operation. The search/seizure of the suspected *shabu* initially noticed in petitioner's possession — later voluntarily exhibited[24] to the police operative — was undertaken after she was interrogated on what she placed inside a cigarette case, and after PO1 Cruzin introduced himself to petitioner as a police officer. And, at the time of her arrest, petitioner was exhibiting suspicious behavior and in fact attempted to flee after the police officer had identified himself.

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[23] *Malacat v. Court of Appeals*, G.R. No. 123595, December 12, 1997, 283 SCRA 159, 177.

[24] TSN, May 29, 2003, pp. 7-8.

It bears recalling that petitioner admitted the genuineness and due execution of the Dangerous Drugs and Toxicology Reports, subject, however, to whatever available defenses she would raise. While such admissions do not necessarily control in determining the validity of a warrantless search or seizure, they nevertheless provide a reasonable gauge by which petitioner's credibility as a witness can be measured, or her defense tested.

It has not escaped the Court's attention that petitioner seeks exculpation by adopting two completely inconsistent or incompatible lines of defense. On one hand, she argues that the "stop-and-frisk" search upon her person and personal effects was unjustified as it constituted a warrantless search in violation of the Constitution. In the same breadth, however, she denies culpability by holding fast to her version that she was at home resting on the date in question and had been forcibly dragged out of the house by the police operatives and brought to the police station, for no apparent reason than to try and extort money from her. That her two witnesses – a daughter and a friend – who were allegedly present at the time of her arrest did not do anything to report it despite their claim that they were not informed why she was being arrested, should dent the credibility of their testimony.

Courts have tended to look with disfavor on claims of accused, such as those of petitioner's, that they are victims of a frame-up. The defense of frame-up, like alibi, has been held as a shop-worn defense of the accused in drug-related cases, the allegation being easily concocted or contrived. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption of regularity of official acts of government officials. This it failed to do.

Absent any proof of motive to falsely accuse petitioner of such a grave offense, the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of witnesses prevail over that of petitioner.[25]

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[25] *People v. Teodoro*, G.R. No. 185164, June 22, 2009, 590 SCRA 494, 507-508.

A word on the penalty.

While the appellate court affirmed the trial court's decision, it overlooked the error in the penalty imposed by the trial court. The trial court, applying the provisions of the Indeterminate Sentence Law, sentenced petitioner to "suffer the penalty of imprisonment ranging from Eight (8) years and One (1) day, as minimum, to Fourteen (14) years, Eight (8) months and One (1) day, as maximum."

Article II, Section 11 of R.A. No. 9165 provides, however:

> Section 11. Possession of Dangerous Drugs.
>
> xxx xxx xxx
>
> Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:
>
> xxx xxx xxx
>
> (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) to Four hundred thousand pesos (₱400,000), 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, **metamphetamine hydrochloride or** "***shabu***" or other dangerous drugs such as, but not limited to MDMA or "ecstacy," PMA, TMA, LSD, GHB and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possesses is far behind therapeutic requirements; or less than three hundred (300) grams of marijuana. (emphasis and underscoring supplied)

Section 1 of the Indeterminate Sentence Law provides that when the offense is punished by a law other than the Revised Penal Code, "the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term prescribed by the same."

The prayer of the Office of the Solicitor General for a modification of the penalty is thus in order.

The Court, therefore, imposes on petitioner the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum.

WHEREFORE, the assailed decision of the Court of Appeals is *AFFIRMED*, with the *MODIFICATION* that the penalty of imprisonment shall be twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum. In all other respects, the decision of the RTC in Criminal Case No. 02-2297 is *AFFIRMED*.

SO ORDERED.

Villarama, Jr. and *Sereno, JJ.*, concur.

Brion, J., joins the dissent of Justice Bersamin.

Bersamin, J., dissents.

DISSENTING OPINION

BERSAMIN, *J.*:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.
>
> – Section 2, Article III of the Constitution

The petitioner was charged with, tried for, and convicted of the serious crime of illegal possession of methamphetamine hydrochloride or *shabu* weighing about 0.1224 gram in violation of Section 11, Article II of Republic Act (RA) No. 9165 (*Comprehensive Dangerous Drugs Act of* 2002) confiscated from her in a stop-and-frisk situation. She is now before the Court to seek the reversal of the decision dated November 27,

2007 rendered by the Court of Appeals (CA), affirming her conviction by the Regional Trial Court in Pasay City (RTC).[1]

The petitioner insists on her acquittal. She challenges the application of the stop-and-frisk principle as the justification for her warrantless arrest and confiscation of the evidence, and points to the abject failure of the arresting officer to justify his suspicion that she was committing a crime by her mere act of placing a transparent plastic sachet inside her cigarette case. She contends that her act was not *per se* suspicious.

The majority affirm the CA decision.

I cannot resist the compulsion to differ and dissent. My careful study moves me to agree with the petitioner that she should be acquitted in view of the illegality of the seizure and the resulting inadmissibility of the evidence used against her. In so declaring, I do not mind that her urine sample tested positive for substance abuse, for she was not charged with and tried for that shortcoming. I believe that the State should not have gone on to prosecute her, given that all the circumstances surrounding her unfortunate arrest indicated the grossest violation of her guaranteed right to privacy. The stop-and-frisk search was absolutely unwarranted and unreasonable.

Antecedents

During a covert surveillance operation mounted in Malibay, Pasay City against an alleged notorious snatcher held in the late afternoon of December 10, 2002, PO1 Alvin Cruzin, the arresting police officer, happened upon the petitioner, who was then standing about a mere three meters away from where he and as fellow police officer were. PO1 Cruzin saw her placing a transparent plastic sachet inside a yellow cigarette case. Although unsure at that moment of what was inside the plastic sachet, he became suspicious and approached her. In his mind, her behavior was strange. He introduced himself as a police officer and inquired about the plastic sachet. Instead of replying, she started to flee. He thus restrained her, and requested her to take the plastic sachet out of the cigarette case. He informed her of her

[1] CA Records, pp. 32-40.

constitutional rights, and confiscated the plastic sachet, which he subsequently marked with her initials "SRE." He haled her to the police station for investigation and disposition.

Subject to her defenses, the petitioner admitted the genuineness and due execution of the Dangerous Drugs and Toxicology Reports rendered by the National Bureau of Investigation (NBI). The reports confirmed that the specimen found inside the plastic sachet was *shabu*, which contained methamphetamine hydrochloride (Exhibit C); and that the urine sample taken from her was positive for metabolite amphetamine (Exhibit D).

The petitioner's defense was frame-up. She assailed the legality of her arrest for the first time on appeal.

As stated, the RTC found the petitioner guilty of illegal possession of the dangerous substance, and imposed the penalty of imprisonment ranging from eight years and one day, as minimum, to 14 years, eight months and one day as maximum and to pay a fine of ₱350,000.00.[2] The RTC found the testimony of PO1 Cruzin positive and straightforward, hence, more credible than the evidence of the petitioner, which consisted of mere denials of the positive assertions of the Prosecution. Further, the RTC ruled that the legal presumption of regularity of performance of official duty in favor of the arresting officer was not rebutted, considering that she did not establish any evil motive on the part of the arresting officers to falsely accuse her; that the defenses of frame-up and extortion by the police in exchange for her release were purely self-serving assertions; and that the fact that she had been determined by the NBI laboratory to be a *shabu* user rendered it not a remote possibility that she had possessed the *shabu* for her personal use or consumption.[3] The majority modify the penalty with an indeterminate sentence ranging from 12 years and one day as minimum to 14 years as maximum.

In affirming the conviction, the CA indicated that the police officers had probable cause to effect a search of the petitioner

[2] RTC Records, p. 150.

[3] RTC Decision, RTC Records, pp. 143-150.

under the concept of stop-and-frisk as an exception to the general rule requiring a warrant to search. The CA ruminated that under the principle of stop-and-frisk, the police officer was authorized "*to stop a citizen on the street, interrogate him, and search him for weapon or contraband*."[4] The CA brushed aside the defense of frame-up, noting that she failed to adduce evidence showing that the officers had been impelled by any evil motive to falsely charge her; and further noting that she was even found positive for substance abuse.

Submissions

In support of my dissent, I make the following submissions.

A

The petitioner's failure to assail the invalidity of her arrest prior to her arraignment, and her objecting to the inadmissibility of the evidence for the first time only on appeal on the ground that the search was illegal for being done despite her not committing any unlawful act to give a justification for the search did not amount to a waiver of her objection to the admissibility of the evidence against her.

The failure to object to the irregularity of an arrest prior to the arraignment does not involve a waiver of the inadmissibility of the evidence. It only amounts to a submission to the jurisdiction of the trial court. The Court said so in several decisions, including *People v. Lapitaje*,[5] *viz*:

A waiver of an illegal warrantless arrest does not also mean a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest. The following searches and seizures are deemed permissible by jurisprudence: (1) search of moving vehicles (2) seizure in plain view (3) customs searches (4) waiver or consent searches (5) stop and frisk situations (Terry Search) and (6) search incidental to a lawful arrest. The last includes a valid warrantless search and seizure pursuant to an equally valid warrantless arrest, for, while as a rule, an arrest is considered legitimate if effected with a valid warrant of arrest, the Rules of Court recognize permissible

[4] *Rollo*, p. 38.

[5] G.R. No. 132042, February 19, 2003, 397 SCRA 674.

warrantless arrests, to wit: (1) arrests *in flagrante delicto*, (2) arrests effected in hot pursuit, and, (3) arrests of escaped prisoners.[6]

B

The CA found nothing wrong or irregular in the arrest of the petitioner and in the search of her person and the seizure of the incriminating evidence from her due to the stop-and-frisk doctrine, a well-recognized exception to the warrant requirement.

I believe that the CA gravely erred in appreciating the factual situation of the search. The stop-and-frisk principle did not apply. The CA confused the stop-and-frisk principle with a search as incidental to a lawful arrest. The Court must correct the CA's error and confusion.

In *Terry v. Ohio*,[7] circa 1968, the United States Supreme Court allowed a *limited protective search* of outer clothing for weapons, where a police officer observes *unusual conduct* that leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the person with whom he is dealing *may be* armed and *presently* dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and *where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety*.

Such permissible limited protective search is for the *only* purpose of enabling the officer to protect himself and others in the area, and is now known famously as the *Terry* stop-and-frisk.

A *Terry* stop-and-frisk is an exception to the constitutional requirement for a judicial warrant as a prerequisite to a valid arrest and search. It is entirely different from and should not

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[6] See also *Valdez v. People* (G..R. No. 170180, November 23, 2007, 538 SCRA 611), where the Court held that notwithstanding the accused's waiver of his right to assail his arrest, the *marijuana* leaves allegedly taken from the accused during an illegal warrantless search that could not be admitted in evidence against him.

[7] 392 US 1, 88 S. Ct. 1868, 20 L. Ed. 889.

be confused with a search incidental to a lawful arrest envisioned under Section 13, Rule 126, 2001 *Rules of Criminal Procedure*.[8] Although it did not expressly state so, the CA labored under the confused view that one and the other were indistinct and identical. That confused view guided the CA to wrongly affirm the petitioner's unfortunate conviction.

We should now reverse the CA, not affirm its error, for it is necessary to remind the trial court and the CA that the stop-and-frisk search is entirely different from the search incidental to a lawful arrest. The distinctions have been made clear in *Malacat v. Court of Appeals*:[9]

> xxx the trial court confused the concepts of a "stop-and-frisk" and of a search incidental to a lawful arrest. **These two types of warrantless searches differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope**.
>
> **In a search incidental to a lawful arrest, as the precedent arrest determines the validity of the incidental search, the legality of the arrest is questioned in a large majority of these cases, *e.g.*, whether an arrest was merely used as a pretext for conducting a search. In this instance, the law requires that there first be arrest before a search can be made—the process cannot be reversed. At bottom, assuming a valid arrest, the arresting officer may search the person of the arrestee and the area within which the latter may reach for a weapon or for evidence to destroy, and seize any money or property found which was used in the commission of the crime, or the fruit of the crime, or that which may be used as evidence, or which might furnish the arrestee with the means of escaping or committing violence**.

In addition to defining the distinctions between the stop-and-frisk search and the search incidental to a lawful arrest, *Malacat*

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[8] Section 13. *Search incident to lawful arrest*. – A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant. (12a)

[9] G.R. No. 123595, December 12, 1997, 283 SCRA 159.

v. Court of Appeals restated the justification for and the allowable scope of a *Terry* stop-and-frisk in the following terms:

> We now proceed to the justification for and allowable scope of a "stop-and-frisk" as a "limited protective search of outer clothing for weapons," as laid down in *Terry*, thus:
>
> > **We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment.**
>
> **Other notable points of *Terry* are that while probable cause is not required to conduct a "stop and frisk," it nevertheless holds that mere suspicion or a hunch will not validate a "stop and frisk." A genuine reason must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him. Finally, a "stop-and-frisk" serves a two-fold interest: (1) the general interest of effective crime prevention and detection, which underlies the recognition that a police officer may, under appropriate circumstances and in an appropriate manner, approach a person for purposes of investigating possible criminal behavior even without probable cause; and (2) the more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the person with whom he deals is not armed with a deadly weapon that could unexpectedly and fatally be used against the police officer.**[10]

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[10] *Id.*, pp 176-177.

Another American judicial pronouncement, *Minnesota v. Dickerson*,[11] enlightens on the purpose and limits of a *Terry* stop-and-frisk, *viz*:

The Fourth Amendment, made applicable to the States by way of the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Time and again, this Court has observed that searches and seizures "'conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment-subject only to a few specifically established and well delineated exceptions.'" *Thompson v. Louisiana*, 469 U.S. 17, 19-20, 105 S.Ct. 409, 410, 83 L.Ed.2d 246 (1984) *(per curiam) (*quoting *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967) (footnotes omitted); *Mincey v. Arizona*, 437 U.S. 385, 390, 98 S.Ct. 2408, 2412, 57 L.Ed.2d 290 (1978); see also *United States v. Place*, 462 U.S. 696, 701, 103 S.Ct. 2637, 2641, 77 L.Ed.2d 110 (1983). **One such exception was recognized in *Terry v. Ohio***, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), **which held that "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot...," the officer may briefly stop the suspicious person and make "reasonable inquiries" aimed at confirming or dispelling his suspicions.** *Id.*, 392 U.S., at 30, 88 S.Ct., at 1884; *see also Adams v. Williams*, 407 U.S. 143, 145-146, 92 S.Ct. 1921, 1922-1923, 32 L.Ed.2d 612 (1972).

Terry further held that "[w]hen an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others," the officer may conduct a patdown search "to determine whether the person is in fact carrying a weapon." 392 U.S., at 24, 88 S.Ct., at 1881. **"The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence...."** *Adams, supra*, at 146, 92 S.Ct., at 1923. Rather, a protective search - permitted without a warrant and on the basis of reasonable suspicion less than probable cause - **must be strictly "limited to that which is necessary for the discovery of weapons which might be used**

[11] 508 U.S. 366, 113 S.Ct. 2130 (June 7, 1993).

to harm the officer or others nearby." *Terry*, *supra*, at 26, 88 S.Ct., at 1882; *see also Michigan v. Long*, 463 U.S. 1032, 1049, and 1052, n. 16, 103 S.Ct. 3469, 3480-3481, and 3482, n. 16, 77 L.Ed.2d 1201 (1983); *Ybarra v. Illinois*, 444 U.S. 85, 93-94, 100 S.Ct. 338, 343-344, 62 L.Ed.2d 238 (1979). **If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under Terry and its fruits will be suppressed.** *Sibron v. New York*, 392 U.S. 40, 65-66, 88 S.Ct. 1889, 1904, 20 L.Ed.2d 917 (1968).

To me, all the foregoing case law cumulatively shows that a *Terry* protective search is *strictly limited* to what is necessary for the discovery of weapons that may be used to harm the officer of the law or others nearby. There must then be a genuine reason to believe that the accused is armed and presently dangerous. Being an exception to the rule requiring a search warrant, a *Terry* protective search is strictly construed; hence, it cannot go beyond what is necessary to determine if the suspect is armed. Anything beyond is no longer valid and the fruits of the search will be suppressed.

Moreover, the genuine reason to believe required for a *Terry* protective search need not amount or equate to probable cause,[12] which infers that an offense is being committed or has been committed. If the reason amounts to probable cause, the officer can already validly effect an *outright* warrantless arrest, and his ensuing search will not be limited to a merely protective one for weapons but will be *for anything related to the offense being committed or has been committed*. Such a search is one incidental to a lawful arrest.

What may be regarded as reasonable suspicion justifying a *Terry* stop-and-frisk search in this jurisdiction has been illustrated

[12] Probable cause is understood to merely mean a reasonable ground for belief in the existence of facts warranting the proceedings complained of (*Owens vs. Gratezel*, 148 Md. 689, 132 A. 265), or an apparent state of facts found to exist upon reasonable inquiry which would induce a reasonably intelligent and prudent man to believe that the accused person had committed the crime (*Brand vs. Hinchman*, 68 Mich. 590, 36 N.W. 664, 13 Am. St. Rep. 362).

in two cases. In *Manalili v. Court of Appeals,*[13] specially trained policemen saw Manalili with reddish eyes walking in a wobbly manner characteristic of a person on drugs in a known hangout of drug users. In *People v. Solayao,*[14] the Court found the drunken actuations of the accused and his companions as justifiable reason to conduct stop-and-frisk on them after considering the following circumstances: (*a*) the fact that his companions fled when they saw the policemen, and *(b*) the fact that the peace officers were precisely on an intelligence mission to verify reports that armed persons were roaming in the vicinity. The common thread of these examples is the presence of *more than one* seemingly innocent activity, which, taken together, warranted a reasonable inference of criminal activity. *It was not so in this case*.

Worse, the search and confiscation of the *shabu* by PO1 Cruzin resulted neither from a valid *Terry* stop-and-frisk nor from a search incidental to a lawful arrest. The petitioner was merely placing a transparent plastic sachet inside her cigarette case in public. PO1 Cruzin himself indicated in his testimony that he did not see or know what the plastic sachet contained before deciding to intrude into her privacy, *viz*.:

Q - So you were conducting surveillance on this certain *alias* Ryan, the alleged snatcher, why, is he residing thereat?

A - The informant told us that he is residing there sir.

Q - So what happened to the surveillance?

A - We did not see him in the said place sir.

Q - After that you went home?

A - No sir.

Q - **What happened next?**

A - **We saw Susan Esquillo sir, putting something inside a yellow cigarette case.**

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[13] G.R. No. 113447, October 9, 1997, 280 SCRA 400.

[14] G.R. No. 119220, September 20, 1996, 262 SCRA 255.

Q - Where was this Susan Equillo then, when you came to see her?

A - She was along the street of Bayanihan sir.

Q - By the way, were you in uniform?

A - No sir.

Q - You were in civilian clothes?

A - Yes sir.

Q - **So what was this Susan Esquillo doing then?**

A - **Inserting small plastic sachet inside the yellow cigarette case sir**.

Q - When you saw her along Bayanihan St., how far were you from her?

A - About 3 meters sir.

Q - Was Susan Esquillo has (sic) any company?

A - None sir.

Q - **So why do you say that you saw her inserting transparent plastic sachet, was she waving the plastic sachet and then inserts it?**

A - **When I passed by her, I saw her inserting something inside the yellow cigarette case sir.**

Q - **But you were not sure that that something was transparent plastic sachet containing *shabu*?**

A - Yes sir, but I became suspicious sir.

FISCAL PUTI:

Q - **Why did you become suspicious that she was inserting illegal item on the cigarette case?**

A - **Because when I was about to come near her, she moved differently.**

Q - **At what point in time did you see Susan Esquillo inserting something inside the cigarette case, while after you saw her or while you were approaching her?**

A - **When I was approaching her sir.**

Q - Now, did you say, she was inserting something inside the cigarette case?

A - Yes sir.[15]

PO1 Cruzin's further testimony attested to his *belated* realization of the content as probably *shabu* only after the petitioner had brought the plastic sachet out of the cigarette case upon his command, to wit:

Q - So why do you have to hold her, was she committing a crime then?

A - Because she was attempting to leave, and if I will not prevent her, she could have left.

Q - So you got hold of her because she was attempting to evade you, is that what you mean?

A - Yes sir.

Q - You did not hold her because he (sic) committed a crime?

A - No sir.

Q - So what happened next?

A - That's it, when she brought out the contents of the cigarette case we learned that it was suspected *shabu* sir.

Q - Why did she pull out the suspected *shabu* from the cigarette case?

A - Because I requested her to bring out the contents sir.

Q - So you ordered her to pull out the suspected *shabu*?

A - Yes sir.

Q - What happened next?

A - After that, I apprise her of her constitutional rights and then we brought her to our office sir.[16]

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[15] TSN, May 29, 2003, pp. 5-6.

[16] *Id.,* p.8.

For purposes of a valid *Terry* stop-and-frisk search, the test for the existence of reasonable suspicion that a person is engaged in criminal activity is the totality of the circumstances, viewed through the eyes of a reasonable, prudent police officer.[17] Yet, the totality of the circumstances described by PO1 Cruzin did not suffice to engender *any* reasonable suspicion in his mind. The petitioner's act, without more, was an innocuous movement, absolutely not one to give rise in the mind of an experienced officer to *any belief* that she had any weapon concealed about her, or that she was probably committing a crime in the presence of the officer. Neither should her act and the surrounding circumstances engender any reasonable suspicion on the part of the officer that a criminal activity was afoot. We should bear in mind that the Court has frequently struck down the arrest of individuals whose overt acts did not transgress the penal laws, or were wholly innocent.

For instance, in *People v. Aminnudin*,[18] the Court declared the warrantless arrest of Aminnudin as he was coming down a vessel to be unconstitutional because, *to all appearances*, such coming down was no less innocent than the coming down of the other disembarking passengers. The Court observed that Aminnudin had not committed, nor was he actually committing or attempting to commit an offense in the presence of the arresting officer, nor was he even acting suspiciously.

Also, in *People v. Mengote*,[19] Mengote was arrested allegedly because the policemen had seen his eyes darting from side to side and he had been holding his abdomen. The State explained that Mengote's actions had excited suspicion in the minds of the arresting officers; but the State did not show what their suspicion was all about, for the policemen themselves testified that they had been dispatched to that place where the arrest was effected only because of the telephone call from the informer that there were "suspicious-looking" persons in that vicinity

[17] *Bost v. State*, 406 Md. 341, 958 A.2d 356 (2008).

[18] G.R. No. 74869, July 6, 1988, 163 SCRA 402.

[19] G.R. No. 87059, June 22, 1992, 210 SCRA 174.

who were about to commit a robbery at North Bay Boulevard. The caller did not explain why he thought the men looked suspicious, nor did he elaborate on the impending crime. The State contended that the actual existence of an offense was not necessary as long as Mengote's acts "created a reasonable suspicion on the part of the arresting officers and induced in them the belief that an offense had been committed and that the accused-appellant had committed it." But the Court would have none of the State's justifications, for it quickly asked: "The question is, What offense? What offense could possibly have been suggested by a person "looking from side to side" and "holding his abdomen" and in a place not exactly forsaken?," and followed its queries with the telling observation: "These are certainly not sinister acts. And the setting of the arrest made them less so, if at all. It might have been different if Mengote had been apprehended at an ungodly hour and in a place where he had no reason to be, like a darkened alley at 3 o'clock in the morning. But he was arrested at 11:30 in the morning and in a crowded street shortly after alighting from a passenger jeep with his companion. He was not skulking in the shadows but walking in the clear light of day. There was nothing clandestine about his being on that street at that busy hour in the blaze of the noonday sun." The Court continued: "On the other hand, there could have been a number of reasons, all of them innocent, why his eyes were darting from side to side and he was holding his abdomen. xxx"

In another case, *People v. Chua*,[20] the record reveals that when Chua arrived at the vicinity of the Thunder Inn Hotel, he merely parked his car along the McArthur Highway, alighted from it, and casually proceeded towards the entrance of the hotel clutching a sealed Zest-O juice box. He did not thereby act in a suspicious manner; hence, for all intents and purposes, he gave no overt manifestation that he had just committed, was actually committing, or was attempting to commit a crime. In that setting, the policemen hurriedly accosted him and later on introduced themselves as officers and arrested him before the

[20] G.R. Nos. 136066-67, February 4, 2003, 396 SCRA 657.

alleged drop-off of *shabu* happened. According to the Court, the probable cause was more imagined than real, for there "could have been no *in flagrante delicto* arrest preceding the search, in light of the lack of an overt physical act on the part of accused-appellant that he had committed a crime, was committing a crime or was going to commit a crime. As applied to *in flagrante delicto* arrests, it has been held that "reliable information" alone, absent any overt act indicative of a felonious enterprise in the presence and within the view of the arresting officers, is not sufficient to constitute probable cause that would justify an *in flagrante delicto arrest*."

If the reasonableness of a *Terry* stop and search is tested in the light of the totality of the circumstances in each case, a *dual inquiry* is necessary: whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances, which justified the interference in the first place.[21]

Here, however, the dual inquiry was not successfully met. The police officers were not even surveying the area of arrest for the presence of drug violators. Neither did they have any informant's tip that the area was a known place for drug users or drug pushers. Considering that they were not even shown to have been specially trained to determine and identify *shabu* from a distance, the only acceptable conclusion to be reached is that PO1 Cruzin had no reasonable suspicion about any illegal or criminal activity on the part of the petitioner. In fact, he admitted that only his curiosity had prompted him to approach her in order to "inquire" about the content of the plastic sachet.

PO1 Cruzin's curiosity did not equate to a reasonable suspicion sufficient to justify his intrusion upon the person of the petitioner, even assuming that he had a sense that the content was white crystalline substance. We all know that *shabu* was not the only white crystalline substance easily available, for other items very similar in appearance, like *tawas* or chlorine bleach, could also be packed in a similar plastic sachet. With that, he had absolutely no justification for his intrusion.

[21] *State v. Roe*, 2004 WL 417511 (Idaho Ct. App. 2004).

Relevantly, it is observed that the majority do not categorically state what the suspicious behavior of the petitioner was.

PO1 Cruzin's restraining of the petitioner because she *attempted* to flee as he approached her was not also legitimate or reasonable. Flight alone was no basis for any reasonable suspicion that criminal activity was afoot. Indeed, a person's flight cannot immediately justify an investigatory stop, for even in high crime areas there are many innocent reasons for flight, including fear of retribution for speaking to officers, unwillingness to appear as witnesses, and fear of being wrongfully apprehended as a guilty party.[22] At any rate, the Court has said in *Valdez v. People*:[23]

> Flight *per se* is not synonymous with guilt and must not always be attributed to one's consciousness of guilt. Of persuasion was the Michigan Supreme Court when it ruled in *People v. Shabaz* that "[f]light alone is not a reliable indicator of guilt without other circumstances because flight alone is inherently ambiguous." Alone, and under the circumstances of this case, petitioner's flight lends itself just as easily to an innocent explanation as it does to a nefarious one.

I contend, therefore, that contrary to the CA's dangerous position the purpose of the *Terry* dictum – *to enable the officer to discover weapons that may be used to harm him or others nearby* – forbids any overindulgence in stopping and searching persons who have given no indication of impending criminal activity. Such purpose really delineates a boundary for *all* stop-and-frisk situations that limits the search to the person's *outer clothing*, subject to the officer having a genuine reason, in light of his and the surrounding conditions, to warrant the belief that the person detained has weapons concealed about him. Any search done beyond the boundary cannot be justified as a valid stop-and-frisk under *Terry*, for it cannot be a *limited protective search*, or a *preventive measure*, or an *act of self-preservation* against a potentially dangerous criminal from harming the officer and others.

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[22] *State v. Nicholson*, 188 S.W.3d 649 (Tenn. 2006).

[23] *Supra*, note 1.

Thus, we should exclude the evidence then seized from the petitioner, for that is the only way by which the Court can effectively enforce the guarantee of the Bill of Rights to her right to privacy and personal security expressed under its Section 2, *supra*. The exclusionary rule is embodied in Section 3 of the Bill of Rights, thus:

> Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.
>
> **(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding**.

The eminent Justice Frankfurter observed in *Walder v. United States*[24] that the application of the exclusionary rule and the invalidation of the conviction were necessary to prevent the State from profiting from its agents' stark violation of this important constitutional right, thus:

> The Government cannot violate the Fourth Amendment – in the only way in which the Government can do anything, namely through its agents – and use the fruits of such unlawful conduct to secure a conviction. *Weeks v. United States* (US) *supra*. Nor can the Government make indirect use of such evidence for its case, *Silverthorne Lumber Co. v. United States*, 251 US 385, 64 L ed 319, 40 S Ct 182, 24 ALR 1426, or support a conviction on evidence obtained through leads from the unlawfully obtained evidence, *cf. Nardone v. United States*, 308 US 338, 84 L ed 307, 60 S Ct 266. **All these methods are outlawed, and convictions obtained by means of them are invalidated, because they encourage the kind of society that is obnoxious to free men**.

Even so, I hasten to clarify that the officer can lawfully seize contraband that should come into view in the course of a *justified* stop-and-frisk or pat-down search, and the contraband will be admissible in evidence. The justification in such a situation is the plain view doctrine, for, as explained in *Minnesota v. Dickerson*:[25]

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[24] 347 US 62, 64-65.

[25] *Supra*, note 11.

We have already held that police officers, at least under certain circumstances, may seize contraband detected during the lawful execution of a Terry search. In *Michigan v. Long,* x x x. x x x. (t)he Court then held: "If, while conducting a legitimate Terry search of the interior of the automobile, the officer should, as here, discover contraband other than weapons, he clearly cannot be required to ignore the contraband, and the Fourth Amendment does not require its suppression in such circumstances." *Id.,* at 1050, 103 S.Ct., at 3481; accord, *Sibron,* 392 U.S., at 69-70, 88 S.Ct., at 1905-1906 (WHITE, *J.*, concurring); *id.,* at 79, 88 S.Ct., at 1910 (Harlan, *J.*, concurring in result).

The Court in *Long* justified this latter holding by reference to our cases under the "plain-view" doctrine. *See Long, supra,* at 1050, 103 S.Ct., at 3481; see also *United States v. Hensley,* 469 U.S. 221, 235, 105 S.Ct. 675, 683-684, 83 L.Ed.2d 604 (1985) (upholding plain-view seizure in context *375 of Terry stop). **Under that doctrine, if police are lawfully in a position from which they view an object, if its incriminating character** **2137 **is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant.** *See Horton v. California,* 496 U.S. 128, 136-137, 110 S.Ct. 2301, 2307-2308, 110 L.Ed.2d 112 (1990); *Texas v. Brown,* 460 U.S. 730, 739, 103 S.Ct. 1535, 1541-1542, 75 L.Ed.2d 502 (1983) (plurality opinion). **If, however, the police lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object- *i.e.*, if "its incriminating character [is not] 'immediately apparent,'"** *Horton, supra,* 496 U.S., at 136, 110 S.Ct., at 2308 - **the plain-view doctrine cannot justify its seizure.** *Arizona v. Hicks,* 480 U.S. 321, 107 S.Ct. 1149, 94 L.Ed.2d 347 (1987).

I need to caution, however, that this exception regarding contraband can arise only as the *consequence* of a validly executed *Terry* stop-and-frisk, which was not true herein. The petitioner was immediately restrained only for the reason that she attempted to flee when PO1 Cruzin was approaching her, despite her not ostensibly posing any danger to him or to anyone else nearby. She did not even appear to be holding any weapon on her person. Thus, the stoppage did not constitute a valid *Terry* stop-and-search, and the CA was in gross error to conclude differently. There was also no probable cause to arrest. Truly, the confiscated

evidence should be excluded due to its inadmissibility against the petitioner.

I urge that we should not feel obstructed by any unwanted criticisms that applying the exclusionary rule can hamper needed law enforcement. A commentator on stop-and-frisk has aptly observed in that regard:[26]

> It is frequently argued that legal technicalities give undue advantage to criminals and that the police must be unshackled in order to fight crime more effectively. Whatever theoretical standards are ideally required, the practical demands of effective criminal investigation require some compromise with theory. It seems obvious that every restriction on police behavior hampers law enforcement. On the other hand, **the human animal rebels at the thought of change, especially when such change implies more work, and police have opposed every incursion on their activities since the abolition of the rack and screw. Yet, each of their dire predictions has gone unfulfilled because this myopic view confuses the long-run and the short-run. As the Supreme Court has said:**
>
> > **However much in a particular case insistence upon such rules may appear as a technicality that inures to the benefit of a guilty person, the history of the criminal law proves that tolerance of shortcut methods in law enforcement impairs its enduring effectiveness**.[27]
>
> **Effectiveness should not be measured in terms of the number of convictions obtained. The ultimate goal of our society is not to punish criminals; rather, it is to preserve liberty. Whenever police act illegally - whatever their purpose - our society suffers. Even if the tasks of the police are made somewhat more difficult by adherence to lawful procedures, it would be a small price to pay for the preservation of individual liberty. If it is conceded that law enforcement is not as effective as it could be, it is**

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[26] Prof. Marcus Schoenfeld, *The "Stop And Frisk" Law Is Unconstitutional*, Syracuse Law Review, Volume17, No. 4, Summer, 1966, pp. 633-634 (*Note*: Professor Schoenfeld taught law at the Cleveland-Marshall Law School of Baldwin-Wallace College; and at the Villanova University School of Law).

[27] Citing *Miller v. US*, 357 US 301, 313.

fallacious to argue that it would necessarily be improved if short cut methods were approved. As the *Mapp* decision stated:

> Nor can it lightly be assumed that, as a practical matter, adoption of the exclusionary rule fetters law enforcement. Only last year this Court expressly considered that contention and found that "pragmatic evidence of a sort" to the contrary was not wanting. *Elkins v. United States* . . . . [364 U.S. 206, 218]. The Court noted that:
>
> The federal courts themselves have operated under the exclusionary rule of *Weeks* for almost half a century; yet it has not been suggested either that the Federal Bureau of Investigation [citing remarks of J. Edgar Hoover quoted in *Elkins*, *supra* at 218-19] has thereby been rendered ineffective, or that the administration of criminal justice in the federal courts has thereby been disrupted . . .." *Id*., at 218-219

Indeed, it is conceivable that adherence to the Constitution would improve justice. xxx

The right of the petitioner to privacy and to personal security intoned herein at the start and enshrined in the Bill of Rights of the Constitution was violated by the arresting officer. We should not hesitate to rectify the violation, and so we must acquit her.

FIRST DIVISION

[G.R. No. 182526. August 25, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEONARDO DEGAY *y* UNDALOS @ CALDO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; PROOF OF HYMENAL LACERATION IS NOT AN ELEMENT.— As correctly assessed by the Court of Appeals: Dr. Alma Lusad testified that *erythema* or redness of the *labia minora* and *labia majora* shows that there is an inflammation or infection in said areas, as the normal color thereof is pinkish, which could have been caused by the rubbing of [a] hard object, like an erect penis, on the area. In *People v. Pruna*, it was held that the absence of hymenal laceration does not preclude the finding of rape, especially when the victim is of tender age. Rape is consummated by the slightest penile penetration of the *labia* or pudendum of the female. The presence of hyperemia in the vaginal opening is a clear indication that the penis of the accused indeed touched the *labia* or pudendum of the complainants. As explained in *People v. Boromeo:* Proof of hymenal laceration is not an element of rape. An intact hymen does not negate a finding that the victim was raped. To sustain a conviction for rape, full penetration of the female genital organ is not necessary. It is enough that there is proof of entry of the male organ into the *labia of the pudendum* of the female organ. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape. As long as the attempt to insert the penis results in contact with the lips of the vagina, even without rupture or laceration of the hymen, the rape is consummated. x x x.

2. REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED BY THE VICTIM.— The defense of alibi interposed by accused-appellant cannot prevail over the positive identification by AAA and BBB that he was the one who raped them. Accused-appellant admitted that Caboan, Capangdanan, where he allegedly stayed from the last week of February 2004 until the first week of April, 2004, is only about three (3) kilometers away from Sabangan, while Kaaligan, where he stayed from morning until evening of May 8, 2004, is only one (1) kilometer away from Sabangan. Pablo Gogo, who was allegedly with accused-appellant in Caboan from March 2, 2004 to April 4, 2004, stated that the distance of three (3) kilometers

from said place to Sabangan could be negotiated in less than one hour. It was not, therefore, physically impossible for accused-appellant to be in Sabangan on the dates and time of the incidents complained of by AAA and BBB. As between the accused-appellant's denial and his positive identification by AAA and BBB as the person who raped them, the court *a quo* did not err in according weight to the latter.

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.*:

This is an appeal from the Decision[1] dated 27 September 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 02176 affirming the Decision[2] dated 24 March 2006 of the Regional Trial Court (RTC) of Bontoc Mountain Province, Branch 35. The RTC found accused-appellant Leonardo Degay guilty beyond reasonable doubt of three counts of statutory rape under Articles 266-A[3] and

[1] Penned by Associate Justice Marina L. Buzon with Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan-Castillo, concurring. CA *rollo*, pp. 90-100.

[2] Penned by Presiding Judge Joseph A. Patnaan. Records, Criminal Case No. 1849, pp. 143-154.

[3] ART. 266-A. *Rape, When and How Committed*.—Rape is committed.—

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority;

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

266-B[4] of the Revised Penal Code and sentenced him to suffer the penalty of *reclusion perpetua* and to pay each of the victims ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

2) By 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.

[4] ART. 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion perpetua* to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

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, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity.

4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime.

5) When the victim is a child below seven (7) years old.

6) When the offender knows that he is afflicted with Human Immune-Deficiency Virus (HIV) / Acquired Immune-Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim.

7) When committed by any member of the Armed Forces of the Philippines or *para-military* units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime.

8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability.

Appellant was charged with three counts of statutory rape in three Informations all dated 16 June 2004, which read:

Criminal Case No. 1849

The undersigned Provincial Prosecutor of Mt. Province, hereby accuses LEONARDO DEGAY, *alias* CALDO, of the crime of STATUTORY RAPE, defined and penalized under Arts. 266-A and 266-B of the Revised Penal Code, as amended, committed as follows:

That on or about March 25, 2004, in the afternoon thereof, inside the *at-atowan*, XXX, barangay XXX, XXX, Mt. Province and within the jurisdiction of the Honorable Court, the above-name (sic) accused, with lewd design and with the use of force and intimidation, did then and there[,] willfully, unlawfully and feloniously remove the pant (sic) and panty of AAA[5] who is nine (9) years old, and thereafter

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9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime.

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *prision mayor* to *reclusion temporal*.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion temporal to *reclusion perpetua*.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be *reclusion perpetua*.

Reclusion temporal shall also be imposed if the rape is committed by any of the ten aggravating/qualifying circumstances mentioned in this article.

[5] Pursuant to Section 44 of Republic Act No. 9262, otherwise known as *The Anti-Violence Against Women and Their Children Act of 2004*, and Section 63, Rule XI of the Rules and Regulations Implementing Republic Act No. 9262, the real names of the victims are withheld to protect their privacy. Fictitious initials are used instead to represent them. Likewise, the personal circumstances or any other information tending to establish or compromise their identities, as well as those of their family members shall not be disclosed. (*see People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426).

have carnal knowledge of the latter, without the consent of and against her will, to the damage and prejudice of the said victim.[6]

Criminal Case No. 1850

The undersigned Provincial Prosecutor of Mt. Province, hereby accuses LEONARDO DEGAY, *alias* CALDO, of the crime of STATUTORY RAPE, defined and penalized under Arts. 266-A and 266-B of the Revised Penal Code, as amended, committed as follows:

That on or about and sometime [in] the second (2nd) week of March 2004, at just past mid-day, at Sitio XXX, *barangay* XXX, XXX, Mt. Province and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and with the use of force and intimidation, [brought] to his house AAA who is nine (9) years old and once inside, accused removed his pant and brief and thereafter forcibly remove[d] the pant (sic) and panty of the victim, then touch and mash the vagina and breast of the latter several times and afterwards laid the victim on the sofa and, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA without her consent and against her will, to the damage and prejudice of the latter.[7]

Criminal Case No. 1851

The undersigned Provincial Prosecutor of Mt. Province, hereby accuses LEONARDO DEGAY, *alias* CALDO, of the crime of STATUTORY RAPE, defined and penalized under Arts. 266-A and 266-B of the Revised Penal Code, as amended, committed as follows:

That on or about May 8, 2004, in the afternoon thereof at XXX, *barangay* XXX, XXX, Mt. Province and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and with the use of force and intimidation, called for and then h[e]ld the hand of BBB who is four (4) years old and afterwards brought her to a room inside his house where accused undressed himself, display (sic) his penis, then remove (sic) the pant (sic) and panty of BBB and then placed himself on top of her at the same time telling the victim that she (sic) will buy candies later on coupled with the threat upon the latter not to tell anybody and immediately thereafter did there and then willfully, unlawfully and feloniously have carnal

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[6] Records, Criminal Case No. 1849, p. 20.

[7] Records, Criminal Case No. 1850, p. 19.

knowledge of BBB without her consent and against her will, to the damage and prejudice of the latter.[8]

When arraigned on the 28 July 2000, the accused pleaded not guilty to the three charges against him.[9] Thereafter, a joint trial of the three cases ensued. The prosecution presented as witnesses Marivic Jacob Agaled, Corazon Panisoc, GGG, Myrna Isilen, BBB, Dr. Alma Lusad, SPO4 Norma Gut-Omen, Primitiva Tumayab, Lonjean Valdez and AAA.

Their version[10] of the facts is as follows:

Private complainant AAA is the first child of the spouses CCC and DDD. She was born to the couple on 22 September 1994. The family resides at *Sitio* XXX, XXX, XXX, where the accused is a neighbour with only five houses separating them. AAA was 9 years old and a grade III pupil at the XXX Central School at the time of the rapes complained of. One afternoon between the hours of 12:00 o'clock and 1:00 o'clock p.m. during the second week of March, 2004, AAA was on her way to school when she met the accused. The accused kissed AAA on the forehead several times, held her hand, and brought her inside his house. He removed his pants and brief and then forcibly removed the pants and underwear of AAA. He laid her on the sofa, mounted her, and inserted his hard penis into her vagina. AAA felt pain in her vagina. After satisfying himself, the accused gave AAA ₱5.00 and warned her not to tell her mother about what happened.

On 25 March 2004, in the afternoon thereof, the accused again sexually abused AAA. He brought AAA inside the *"at-atoan"* and after undressing her and himself, he mounted her. He pushed his erect penis into the girl's vagina after which the latter felt pain and something sticky in her private organ. The accused then put on his clothes and threatened AAA with harm if she would tell her mother about the incident.

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[8] Records, Criminal Case No. 1851, p. 18.

[9] Records, Criminal Case No. 1849, p. 37; Criminal Case No. 1850, p. 21; and Criminal Case No. 1851, p. 22.

[10] Records, Criminal Case No. 1849, pp. 145-148.

CCC, AAA's mother, came to know of what happened to her child from her neighbour, Primitiva Tumayab, to whom AAA revealed that the accused had sexually molested her. CCC also received related information from Leticia Bondad and Lonjean Valdez (Valdez). Valdez testified that sometime on the second week of March, 2004, while she was at their rooftop terrace harvesting *sili*, she saw the accused and AAA enter the house of the accused through the backdoor. The accused's house is only 1½ meters from Valdez's house.

On 15 May 2004, CCC confronted her daughter AAA about the information she received and AAA confirmed that the accused raped her. The following day, CCC reported the matter to the police who took her and AAA's sworn statements. On 17 May 2004, AAA and one BBB who would turn out to be another complainant, were examined at the Bontoc General Hospital by Dr. Alma T. Lusad (Dr. Lusad).

Regarding her findings on AAA, Dr. Lusad explained that there was *erythema* or redness at the area of the *labia majora* and *labia minora* but there were no hymenal lacerations. According to the doctor, the *erythema* or redness could have been caused by an erect penis that touched the *labia*.

With regard to her findings on BBB, Dr. Lusad testified that there was likewise no hymenal laceration but there was "*erythema*" of the perihymenal area at the 3:00 o'clock and 9:00 o'clock positions. The physician explained that the *erythema* could have been caused by a hard object including an erect penis.

BBB, the other complainant, is the four-year old daughter of the spouses EEE and FFF. She is the youngest of their six children. BBB's mother, EEE, is blind. The family resides at XXX, XXX, XXX, XXX.

In the afternoon of 8 May 2004, BBB and her neighbour, Myrna Isilen, were playing in the house of a certain *Lola* Pelaw when the accused whom BBB calls as "*Lolo* Caldo" came and told BBB to come with him so he will give her money to buy candy. The accused took BBB by the hand and brought her to the bedroom on the second floor of the house. He undressed

himself and likewise removed BBB's shorts and panties. He laid her down on the bed and went on top of her. BBB felt pain when the accused put his hard penis on her vagina. Afterwards, the accused told BBB not to tell her parents about what he did. He got up and dressed himself when he heard a loud knocking on his door.

When BBB's playmate, Myrna Isilen (Myrna) saw the accused bring BBB inside his house, she went to tell *Lola* Pelaw about it. Myrna also relayed the information to BBB's mother, EEE, who was then washing dishes at their house. Myrna and EEE proceeded immediately to the house of the accused. GGG, BBB's sister followed them. They knocked loudly on the door of the accused but the latter did not open the door. It was only when GGG told Myrna to call the police that the accused opened the door, whereupon she entered the house and fetched BBB from the second floor. There was nobody in the house except BBB and the accused. GGG asked BBB what happened and the child replied that the accused removed her clothes, undressed himself, went on top of her, and inserted his penis inside her vagina. When GGG, who was carrying BBB, came out of the house, EEE asked BBB what the accused did to her. BBB replied that the accused removed her shorts and that the latter undressed himself and went on top of her. Upon hearing this, EEE went to report the matter to the police who took her and BBB's sworn statements.

The defense presented seven witnesses: Antonio Bolinget, Asuncion Galleo, Eugenia L. Roux, Nenita Daling, Felomina Gonzaga, Pablo Gogo (Gogo) and the accused himself. Based on their testimonies, the defense version[11] of the facts is as follows:

On the last week of February, 2004, the accused went to Caboan, Capangdanan, Sabangan and stayed there up to the first week of April, 2004, before he returned to Poblacion, Sabangan. The accused worked on his ricefields, preparing them for planting. He called fifteen people to help him work thereon.

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[11] *Id.* at 148-149.

The accused stayed in his house which was made of wood and *G.I.* sheets. Pablo Gogo (Gogo) testified that he stayed at his farm in Caboan from 2 March 2004 to 4 April 2004, and likewise stayed in his "*ab-abong"* which is five meters from the shanty of the accused. Gogo declared that the shanties were made of *cogon* and not *G.I.* sheets. Caboan is about three kilometers from Poblacion, Sabangan, and it can be hiked in less than an hour. The testimony of Gogo likewise shows that some farmers work in their fields and then go back home to Sabangan at day's end. They do not spend the night there. Gogo avers that the accused was one of those who stayed at Caboan.

On 8 May 2004, the accused was at Kaaligan, Sabangan from 8:00 o'clock in the morning until 11:00 o'clock in the evening. He was there with many others to wait for the cadaver of one Rodrigo Galeo to be brought home from Cervantes, Ilocos Sur. Antonio Bolinget and Nenita Daling testified that indeed the accused was at Kaaligan on aforesaid date, and that the accused was one of those who brought Galeo's body to his house at Dogo, Sabangan at about 11:00 o'clock at night.

Eugenia L. Roux testified that she was the teacher of complainant AAA in grade III at the XXX Central School during the school year 2003-2004. She claimed that AAA was present during the entire second week of March 2004 and on 25 March 2004 as per her record. She further testified that she has not observed any behavioral changes in or unusual behavior of her pupil.

The accused denied knowing the complainants and avers he came to know them only when he was detained at the Bauko Municipal Jail.

On 24 March 2006, the RTC rendered a consolidated judgment finding the accused guilty of three counts of statutory rape as follows:

> WHEREFORE, finding the accused Leonardo Degay *alias* Caldo guilty beyond reasonable doubt of three (3) counts of STATUTORY RAPE, a Consolidated Judgment is hereby rendered sentencing him to suffer –
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> 1. The penalty of *reclusion perpetua* and ordering him to pay AAA the sum of Fifty Thousand (₱50,000.00) PESOS as civil

indemnity and another Fifty Thousand (₱50,000.00) PESOS as moral damages for each count of STATUTORY RAPE in Crim. Cases No. 1849 and 1850.

2. The penalty of *reclusion perpetua* and ordering him to pay the private complainant BBB, the sum of Fifty Thousand (₱50,000.00) PESOS as indemnity *ex delicto* and another Fifty Thousand (₱50,000.00) PESOS as moral damages in Crim. Case No. 1851 for Statutory Rape.[12]

On 27 September 2007, the Court of Appeals affirmed the decision of the RTC.[13]

Before this Court now on appeal, the parties opted to no longer file supplemental briefs, manifesting that they had exhaustively discussed their arguments in the briefs they filed before the Court of Appeals.[14]

In his Brief,[15] the accused assigns the following errors:

I.

THE COURT *A QUO*, GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THREE (3) COUNTS OF STATUTORY RAPE.

II.

THE COURT *A QUO*, OVERWHELMED BY THE NUMBER OF PROSECUTION WITNESSES GRAVELY ERRED IN FINDING THE ACCUSED CULPABLE FOR THREE (3) COUNTS OF STATUTORY RAPE.

III.

THE COURT *A QUO*, GRAVELY ERRED IN FINDING THE PLAUSIBLE ALIBI OF THE ACCUSED-APPELLANT NOT WORTHY OF CREDENCE.[16]

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[12] *Id.* at 154.

[13] CA *rollo*, p. 99.

[14] *Rollo*, pp. 27, 32-33.

[15] CA *rollo*, pp. 32-48.

[16] *Id.* at 32.

Did the Court of Appeals err in affirming the RTC decision convicting the accused of three counts of statutory rape?

The accused argues that his acts of showing his penis to BBB and the touching of AAA's vagina, mashing of her breasts and letting his penis touch her vagina constitute lascivious conduct and not statutory rape, citing Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, Republic Act No. 7610,[17] which defines lascivious conduct as "the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals on pubic area of a person." He cites that the lascivious conduct is supported by the medico-legal findings on AAA and BBB, when it was found that there was no hymenal laceration on their organs. The accused further faults the RTC for not giving credence to his plausible *alibi* that he was in another place on 8 May 2004 and it was impossible for him to have brought BBB to his house and raped her.

On the other hand, the prosecution, through the Office of the Solicitor General, in its brief[18] argues that it had proven beyond reasonable doubt that the accused committed statutory rape and not just acts of lasciviousness. It cited the categorical and straightforward testimonies of AAA and BBB as corroborated by the medical findings showing both victims suffered *erythema* or redness in the areas of their *labias minora* and *majora*. It pointed out that this Court had held in *People v. De la Cuesta*,[19] that absence of hymenal lacerations on the private organs of the victims does not negate rape. It stressed that the RTC correctly convicted the accused of three counts of statutory rape since

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[17] The *SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT*, approved on 17 June 1992.

[18] CA *rollo*, pp. 67-85.

[19] 396 Phil. 330, 337 (2000).

the accused had sexual intercourse with the victims who are both under 12 years of age. It finally argued that the accused cannot exculpate himself from liability by alleging that from the last week of February, 2004 to the first week of April, 2004, he was in Caboan, Capangdanan because Caboan is only three kilometers away from Sabangan and could be traversed in an hour or less. It was therefore not physically impossible for the accused to be at the crime scenes.

After review, we uphold the rulings of the appellate court and the RTC.

As correctly assessed by the Court of Appeals:

> Dr. Alma Lusad testified that *erythema* or redness of the *labia minora* and *labia majora* shows that there is an inflammation or infection in said areas, as the normal color thereof is pinkish, which could have been caused by the rubbing of [a] hard object, like an erect penis, on the area. In *People v. Pruna*,[20] it was held that the absence of hymenal laceration does not preclude the finding of rape, especially when the victim is of tender age. Rape is consummated by the slightest penile penetration of the *labia* or pudendum of the female. The presence of hyperemia in the vaginal opening is a clear indication that the penis of the accused indeed touched the *labia* or pudendum of the complainants.
>
> As explained in *People v. Boromeo*:[21]
>
> Proof of hymenal laceration is not an element of rape. An intact hymen does not negate a finding that the victim was raped. To sustain a conviction for rape, full penetration of the female genital organ is not necessary. It is enough that there is proof of entry of the male organ into the *labia of the pudendum* of the female organ. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape. As long as the attempt to insert the penis results in contact with the lips of the vagina, even without rupture or laceration of the hymen, the rape is consummated. x x x.

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[20] 439 Phil. 440, 462-463 (2002).

[21] G.R. No. 150501, 3 June 2004, 430 SCRA 533, 542.

The defense of alibi interposed by accused-appellant cannot prevail over the positive identification by AAA and BBB that he was the one who raped them. Accused-appellant admitted that Caboan, Capangdanan, where he allegedly stayed from the last week of February 2004 until the first week of April, 2004, is only about three (3) kilometers away from Sabangan, while Kaaligan, where he stayed from morning until evening of May 8, 2004, is only one (1) kilometer away from Sabangan. Pablo Gogo, who was allegedly with accused-appellant in Caboan from March 2, 2004 to April 4, 2004, stated that the distance of three (3) kilometers from said place to Sabangan could be negotiated in less than one hour. It was not, therefore, physically impossible for accused-appellant to be in Sabangan on the dates and time of the incidents complained of by AAA and BBB. As between the accused-appellant's denial and his positive identification by AAA and BBB as the person who raped them, the court *a quo* did not err in according weight to the latter.[22]

In line with recent jurisprudence, however, the awards of moral and exemplary damages are increased to ₱75,000.00 and ₱30,000.00, respectively.[23]

WHEREFORE, the Decision dated 27 September 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 02176 affirming the Decision dated 24 March 2006 of the Regional Trial Court of Bontoc Mountain Province, Branch 35 is *AFFIRMED* with *MODIFICATION*. This Court finds appellant guilty beyond reasonable doubt of three counts of statutory rape and sentences him to suffer the penalty of *reclusion perpetua* for each rape and to indemnify the victims the sums of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages for each count of rape. No pronouncement as to costs.

SO ORDERED.

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

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[22] *Rollo,* pp. 8-10.

[23] *People v. Sia*, G.R. No. 174059, 27 February 2009, 580 SCRA 364, 367 citing *People v. Abellera*, G.R. No. 166617, 3 July 2007, 526 SCRA 329, 343.

THIRD DIVISION

[G.R. No. 182651. August 25, 2010]

HEIRS OF JANE HONRALES, *petitioners, vs.* **JONATHAN HONRALES,** *respondent.*

[G.R. No. 182657. August 25, 2010]

PEOPLE OF THE PHILIPPINES and HEIRS OF JANE HONRALES, *petitioners, vs.* **JONATHAN HONRALES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; THE TRIAL COURT'S FAILURE TO MAKE AN INDEPENDENT ASSESSMENT OF THE MERITS OF THE CASE IS AN ABDICATION OF ITS JUDICIAL POWER.— It is beyond cavil that the RTC acted with grave abuse of discretion in granting the withdrawal of the Information for parricide and recalling the warrant of arrest without making an independent assessment of the merits of the case and the evidence on record. By relying solely on the manifestation of the public prosecutor that it is abiding by the Resolution of the Secretary of Justice, the trial court abdicated its judicial power and refused to perform a positive duty enjoined by law.

2. ID.; ID.; DOUBLE JEOPARDY; REQUISITES; THAT THE JUDGMENT BE RENDERED BY A COURT OF COMPETENT JURISDICTION IS ABSENT IN CASE AT BAR.— [D]ouble jeopardy exists when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) **before a competent court**; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent. In this case, the MeTC took cognizance of the Information for reckless imprudence

> resulting in parricide while the criminal case for parricide was still pending before the RTC. In *Dioquino v. Cruz, Jr.*, we held that once jurisdiction is acquired by the court in which the Information is filed, it is there retained. Therefore, as the offense of reckless imprudence resulting in parricide was included in the charge for intentional parricide pending before the RTC, the MeTC clearly had no jurisdiction over the criminal case filed before it, the RTC having retained jurisdiction over the offense to the exclusion of all other courts. The requisite that the judgment be rendered by a court of competent jurisdiction is therefore absent. A decision rendered without jurisdiction is not a decision in contemplation of law and can never become executory.

APPEARANCES OF COUNSEL

Jose M. Mendiola for Heirs of Jane Honrales.

Pamaran Ramos & Partners Law Offices for Jonathan Honrales.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court are petitions for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the October 1, 2007 Decision[1] and April 3, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 92755.

The antecedents are as follows:

On August 19, 2002, Jane Honrales was fatally shot by her husband, respondent Jonathan Honrales. Thus, in a Resolution[3] dated October 28, 2002, Bernardino R. Camba, Assistant City

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[1] *Rollo* (G.R. No. 182651), pp. 27-34. Penned by Associate Justice Estela Perlas-Bernabe with Associate Justices Portia Aliño-Hormachuelos and Lucas P. Bersamin (now a member of this Court) concurring.

[2] *Id.* at 35.

[3] Records, Vol. 1, pp. 3-5.

Prosecutor of Manila, recommended the filing of an information for parricide against respondent. On November 18, 2002, the following Information[4] was filed against respondent with the Regional Trial Court (RTC) of Manila:

> That on or about August 19, 2002, in the City of Manila, Philippines, the said accused, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon one JANE HONRALES *y* ILAGAN, his legal wife, by then and there shooting her with a 45 cal. pistol, thereby inflicting upon the latter a gunshot wound of the head and neck which was the direct and immediate cause of her death thereafter.
>
> Contrary to law.

On November 21, 2002, Judge Teresa P. Soriaso of the RTC of Manila, Branch 27, ordered respondent's arrest.[5]

On November 22, 2002, respondent moved to reconsider[6] the October 28, 2002 Resolution of Assistant City Prosecutor Camba which recommended the filing of parricide charges. Respondent later also filed a supplement to his motion.

In view of respondent's motion for reconsideration, 2nd Assistant City Prosecutor Alfredo E. Ednave moved that the RTC defer proceedings.[7] Respondent in turn filed an Urgent *Ex-Parte* Motion to Recall Warrant of Arrest,[8] which the public prosecutor opposed.[9]

On December 12, 2002, the RTC issued an Order[10] deferring proceedings in view of the pendency of respondent's motion for reconsideration. It, however, denied the motion to recall the arrest warrant since deferment of proceedings does not impair

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[4] *Id.* at 1-2. Docketed as Criminal Case No. 02-207976.

[5] *Id.* at 58.

[6] *Id.* at 68-74.

[7] *Id.* at 65.

[8] *Id.* at 66-67.

[9] *Id.* at 83.

[10] *Id.* at 84-85.

the validity of the information or otherwise render the same defective. Neither does it affect the jurisdiction of the court over the offense as would constitute a ground for quashing the information. The trial court further held that considering the evidence submitted, it finds probable cause for the issuance of the arrest warrant.

On May 21, 2003, 2nd Assistant City Prosecutor Laura D. Biglang-Awa filed a Motion for Leave to Conduct Reinvestigation[11] with the RTC in light of the affidavit of one (1) Michelle C. Luna, which respondent, in his motion/supplemental motion for reconsideration, argues "will belie the statement of witness for the complainant, John James Honrales that the shooting of the victim . . . was intentional."

On May 30, 2003, the RTC issued an Order[12] granting leave to conduct the reinvestigation and authorizing 2nd Assistant City Prosecutor Biglang-Awa to reinvestigate the case.

On September 9, 2003, the heirs of the victim (petitioner heirs) moved before the Office of the City Prosecutor of Manila for the inhibition[13] of 2nd Assistant City Prosecutor Biglang-Awa from conducting the reinvestigation and praying that the case be remanded to the court for trial.[14]

On September 25, 2003, City Prosecutor Ramon R. Garcia issued Office Order No. 1640[15] reassigning the case to Assistant City Prosecutor Antonio R. Rebagay. Hearings were scheduled on October 15 and 22, 2003.

On October 15, 2003, both parties appeared but petitioner heirs manifested that they earlier moved to reconsider Office Order No. 1640. Respondent moved that he be given up to October 22, 2003 to file an opposition.

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[11] *Id.* at 102-103.

[12] *Id.* at 112.

[13] *Id.* at 116-122.

[14] *Id.* at 121.

[15] *Id.* at 147.

On October 22, 2003, respondent filed his opposition. Counsel for petitioner heirs then manifested that they be given until November 5, 2003 to submit a reply thereto.

On November 17, 2003, Assistant City Prosecutor Rebagay issued an Order[16] denying petitioners' motion to reconsider Office Order No. 1640 and set the continuation of the hearings on December 3 and 10, 2003.

On December 3, 2003, both parties appeared. Petitioner heirs moved that the hearing be suspended on the ground that they have filed a petition for review before the Department of Justice (DOJ) to assail the Order of November 17, 2003. Respondent's counsel objected in view of the presence of their witness Michelle Luna. Thus, the hearing proceeded. After the hearing, petitioner heirs moved for the cancellation of the December 10, 2003 hearing and filed a formal motion to that effect.

On December 15, 2003, respondent filed a Motion and Manifestation praying that the case be submitted for resolution or, in the alternative, that it be set for final clarificatory hearing on December 22, 2003.

The following day or on December 16, 2003, Assistant City Prosecutor Rebagay issued an Order denying the prayers for suspension and submission of the case for resolution and instead set the hearing on December 22, 2003.

On December 19, 2003, however, Assistant City Prosecutor Rebagay issued a Resolution[17] setting aside the October 28, 2002 Resolution and recommending the withdrawal of the information for parricide and the filing of an information for reckless imprudence resulting in parricide in its stead. City Prosecutor Garcia approved the Resolution.

On January 16, 2004, Assistant City Prosecutor Rebagay filed with the RTC a motion to withdraw the information for parricide.[18]

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[16] *Id.* at 190.

[17] *Id.* at 224-228.

[18] *Id.* at 229.

On January 28, 2004, while the Motion to Withdraw Information was still pending, an Information[19] for Reckless Imprudence resulting in Parricide was filed against respondent before the Metropolitan Trial Court (MeTC) of Manila. The Information reads,

> That on or about August 19, 2002, in the City of Manila, Philippines, the said accused, being then in possession of a 45 cal. pistol, did then and there unlawfully and feloniously, after removing the bullets of the gun in a careless, reckless, negligent and imprudent manner playfully poked the gun to his maid, son and to his wife, by then and there accidentally shooting upon one JANE HONRALES, his legal wife, inflicting upon the latter a gun shot wound of the head and the neck which was the direct and immediate cause of her death thereafter.
>
> CONTRARY TO LAW.

Determined to have respondent prosecuted for parricide, petitioner heirs filed a petition for review[20] with the DOJ questioning the downgrading of the offense. They likewise filed an Opposition to Motion to Withdraw Information[21] with the RTC arguing that there was no final resolution yet downgrading the charge against respondent that would justify withdrawal of the Information for parricide.

On February 17, 2004, petitioner heirs filed an Urgent *Ex-Parte* Motion to Defer Proceedings[22] with the RTC to give time to the DOJ Secretary to resolve their petition for review.

On March 17, 2004, the DOJ, through Chief State Prosecutor Jovencito R. Zuño, dismissed the petitions for review assailing (1) the Order dated November 17, 2003 of Assistant City Prosecutor Rebagay denying the urgent motion to reconsider Office Order No. 1640 and (2) the Resolution dated December 19, 2003 finding probable cause against respondent for reckless

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[19] *Id.* at 302.

[20] *Id.* at 306-320.

[21] *Id.* at 235-241.

[22] *Id.* at 344-345.

imprudence resulting in parricide, instead of intentional parricide as charged.[23]

Petitioner heirs moved to reconsider[24] the Resolution, and the RTC of Manila issued an Order[25] on April 14, 2004, holding in abeyance the resolution of the pending incidents in the parricide case in view of the said motion for reconsideration.

On May 14, 2004, the DOJ, through Chief State Prosecutor Zuño, denied petitioners' motion for reconsideration.[26] Thus, Judge Soriaso of the RTC of Manila issued an Order[27] on May 28, 2004 considering the motion to withdraw the Information submitted for resolution.

Undaunted by the denial of their motion for reconsideration, however, petitioners again filed a petition for review[28] with the DOJ on June 14, 2004, assailing said denial. Said petition, however, was dismissed with finality by the DOJ in a Resolution[29] dated July 14, 2004.

Contending that the petition for review before the DOJ questioning the downgrading of the offense was no longer an impediment to the resolution of the pending Motion to Withdraw Information, respondent promptly filed with the RTC a Manifestation with Reiteration to Resolve the Motion to Withdraw Information.[30]

On August 5, 2004, petitioner heirs appealed[31] the dismissal of their petitions to the Office of the President (OP). Thus, on

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[23] *Id.* at 369-370.

[24] *Id.* at 371-378.

[25] *Id.* at 426-427.

[26] *Id.* at 435.

[27] *Id.* at 443.

[28] *Id.* at 446-452.

[29] *Id.* at 495-496.

[30] *Id.* at 493-494.

[31] *Id.* at 504-511.

August 6, 2004, Judge Soriaso reiterated her previous ruling to hold in abeyance the resolution of the motion to withdraw in deference to the appeal taking its course before the OP.[32]

In the meantime, on October 11, 2004, respondent was arraigned before the MeTC and pleaded guilty to the charge of reckless imprudence resulting in parricide. He was accordingly sentenced to suffer the penalty of one (1) year, seven (7) months and eleven (11) days to two (2) years, ten (10) months and twenty (20) days of *prision correccional*.[33]

On October 27, 2004, respondent filed with the RTC a motion[34] seeking to dismiss the parricide charges against him. He cited his arraignment and conviction by the MeTC as grounds for the dismissal of the case against him.

On October 28, 2004, petitioner heirs filed with the MeTC a motion[35] to nullify the proceedings held on October 11, 2004. They claimed that they were denied procedural due process since October 11, 2004 was not the agreed date for respondent's arraignment but October 18, 2004. They also argued that the Information before the MeTC was invalid.

On December 6, 2004, the OP dismissed petitioner heirs' appeal of the DOJ Resolution.[36] Petitioner heirs promptly moved to reconsider the OP's dismissal of their appeal, but their motion was denied by Resolution[37] dated April 20, 2005.

On May 5, 2005, respondent moved for Judge Soriaso's inhibition[38] alleging bias in favor of the prosecution as shown by her continued inaction on his motion to withdraw Information.

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[32] *Id.* at 548.

[33] *Id.* at 576.

[34] *Id.* at 573-575.

[35] *Id.* at 620-629.

[36] Records, Vol. 2, pp. 4-5.

[37] *Id.* at 36-37.

[38] *Id.* at 17-20.

On June 6, 2005, petitioner heirs filed before the CA an appeal by *certiorari*[39] under Rule 43 of the 1997 Rules of Civil Procedure, as amended, assailing the denial by the OP of their motion for reconsideration.

On June 30, 2005, Judge Soriaso inhibited herself from the case.[40] The case was eventually re-raffled off to Branch 54 presided over by Judge Manuel M. Barrios.

Shortly thereafter, Judge Barrios issued an Order[41] on September 26, 2005 granting the withdrawal of the Information for parricide and recalling the warrant of arrest issued against respondent. Judge Barrios ruled that the Information for parricide found itself without a supporting resolution and thus its withdrawal was appropriate.

On October 14, 2005, petitioner heirs filed a motion for reconsideration[42] of the September 26, 2005 Order but their motion was noted without action on November 3, 2005, as it was made without the approval or intervention of the Public Prosecutor.[43]

On January 9, 2006, petitioner heirs filed a petition for *certiorari*[44] with the CA **assailing the September 26, 2005 and November 3, 2005 Orders issued by the RTC through Judge Barrios.** Petitioner heirs argued that Judge Barrios granted the motion to withdraw the Information for parricide on grounds other than his personal and independent findings. They likewise contended that Judge Barrios should not have granted the withdrawal of the Information and recall of the arrest warrant since he knew that their appeal with the CA disputing the downgrading of the offense was still pending. Petitioner heirs further argued that the adoption of a contrary stand by the

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[39] CA *rollo*, pp. 63-79.

[40] Records, Vol. 2, p. 63.

[41] *Id.* at 93-98.

[42] *Id.* at 104-107.

[43] *Id.* at 108.

[44] CA *rollo*, pp. 2-15.

prosecutor after the filing of the Information for parricide should not bar them from prosecuting the case actively sans supervision and intervention of the prosecutor.

On August 16, 2006, petitioner heirs filed a Motion to Implead the People of the Philippines as party respondent.[45] On August 31, 2006, the Office of the Solicitor General (OSG) filed a similar motion[46] and further prayed that it be furnished a copy of the petition and be given time to file its comment. On October 10, 2006, the CA granted the motions.[47]

On October 1, 2007, the CA dismissed the petition for *certiorari*. Though it found that Judge Barrios failed to make an independent assessment of the merits of the case and thus abdicated his judicial power and acted as a mere surrogate of the Secretary of Justice, it ruled that the remand of the case to the RTC would serve no useful purpose since it may result in the reopening of the parricide case which would violate respondent's constitutional right against double jeopardy.

Petitioner heirs and the OSG moved to reconsider the CA decision, but their motions were denied on April 3, 2008. Hence, they filed the present consolidated petitions raising the sole issue of whether the remand of the parricide case to the trial court will violate respondent's constitutional right against double jeopardy.

Petitioner heirs argue that the MeTC did not validly acquire jurisdiction over the case for parricide through reckless imprudence and that jurisdiction remained with the RTC where the Information for parricide was filed. They also assail the filing with the MeTC of the Information for the downgraded offense after a supposedly dubious reinvestigation and question the hasty arraignment of accused which was done allegedly without notice to petitioner heirs and without them being furnished with the result of the reinvestigation. They even claim that they were not furnished

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[45] *Id.* at 206-208.

[46] *Id.* at 210-213.

[47] *Id.* at 216-217.

with a copy of the motion for leave to conduct reinvestigation as it was sent to the wrong address. Petitioner heirs further argue that when respondent immediately pleaded guilty to the charge for reckless imprudence without notice to them, such a plea cannot be legally invoked in respondent's defense of double jeopardy. Also, the Information for parricide was still pending with the RTC when accused was hastily arraigned for the downgraded offense. Thus, not all requisites of double jeopardy are present.

The OSG, for its part, argues that the MeTC could not have validly acquired jurisdiction over the case for the same offense of parricide or any offense necessarily included therein because the prosecution's motion to withdraw the Information for parricide before the RTC remained unacted upon by the said court.

Respondent, on the other hand, maintains that if the petition is granted, it would violate his right against double jeopardy. The first jeopardy has already attached because there was a valid indictment, arraignment and plea and the proceedings were already terminated as he is already serving sentence and has applied for probation. He also contends that proceeding with reinvestigation was justified since the principal action can continue if there is no order from the appellate court to stop the proceedings. He further argues that petitioner heirs have no right to file this appeal especially since the appeal was filed by petitioner heirs without the public prosecutor's conformity. Respondent likewise contends that it is already too late for petitioner heirs to question the validity of the MeTC proceedings since its decision has become final and executory, no appeal having been taken from the decision. Also, petitioner heirs failed to present evidence to prove that there was fraud in the reinvestigation and subsequent plea to a lesser offense.

We grant the petitions.

It is beyond cavil that the RTC acted with grave abuse of discretion in granting the withdrawal of the Information for parricide and recalling the warrant of arrest without making an independent assessment of the merits of the case and the evidence

on record.[48] By relying solely on the manifestation of the public prosecutor that it is abiding by the Resolution of the Secretary of Justice, the trial court abdicated its judicial power and refused to perform a positive duty enjoined by law. What remains for our resolution is whether the case may be remanded to the RTC without violating respondent's right against double jeopardy. On this question, we find the answer to be in the affirmative.

Section 7, Rule 117 of the Revised Rules of Criminal Procedure, as amended provides:

SEC. 7. *Former conviction or acquittal; double jeopardy*. – When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a **court of competent jurisdiction**, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

xxx xxx xxx

Thus, double jeopardy exists when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) **before a competent court**; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent.[49]

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[48] See *Santos v. Orda, Jr.*, G.R. No. 158236, September 1, 2004, 437 SCRA 504, 515; *Ledesma v. Court of Appeals*, G.R. No. 113216, September 5, 1997, 278 SCRA 656, 682.

[49] *People v. Nazareno*, G.R. No. 168982, August 5, 2009, 595 SCRA 438, 449; *People v. Tampal*, G.R. No. 102485, May 22, 1995, 244 SCRA 202, 208.

In this case, the MeTC took cognizance of the Information for reckless imprudence resulting in parricide while the criminal case for parricide was still pending before the RTC. In *Dioquino v. Cruz, Jr.*,[50] we held that once jurisdiction is acquired by the court in which the Information is filed, it is there retained. Therefore, as the offense of reckless imprudence resulting in parricide was included in the charge for intentional parricide[51] pending before the RTC, the MeTC clearly had no jurisdiction over the criminal case filed before it, the RTC having retained jurisdiction over the offense to the exclusion of all other courts. The requisite that the judgment be rendered by a court of competent jurisdiction is therefore absent.

A decision rendered without jurisdiction is not a decision in contemplation of law and can never become executory.[52]

WHEREFORE, the present petitions are *GRANTED*. The Decision dated October 1, 2007 and Resolution dated April 3, 2008 of the Court of Appeals in CA-G.R. SP No. 92755 are hereby *REVERSED and SET ASIDE*. Consequently, the September 26, 2005 and November 3, 2005 Orders of the Regional Trial Court of Manila, Branch 54 are hereby *NULLIFIED* and said trial court is hereby *DIRECTED to REINSTATE* Criminal Case No. 02-207976 for parricide for appropriate criminal proceedings.

Carpio Morales (*Chairperson*), *Brion, Perez,*[*] and *Sereno, JJ.*, concur

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[50] Nos. L-38579 & L-39951, September 9, 1982, 116 SCRA 451, 456.

[51] See *Magno v. People*, G.R. No. 149725, October 23, 2003, 414 SCRA 246, 258, citing *People v. De Fernando*, 49 Phil. 75 (1926); *People v. Carmen*, G.R. No. 137268, March 26, 2001, 355 SCRA 267; *Samson v. Court of Appeals, et al.*, 103 Phil. 277 (1958).

[52] *Municipality of Antipolo v. Zapanta*, No. 65334, December 26, 1984, 133 SCRA 820, 825.

[*] Designated additional member per Raffle of March 8, 2010 in view of the recusal of Associate Justice Lucas P. Bersamin from the case due to prior action in the Court of Appeals.

FIRST DIVISION

[G.R. No. 185206. August 25, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL AGUILAR,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; MINORITY AND RELATIONSHIP; SHOULD BE ALLEGED IN THE INFORMATION TO QUALIFY THE OFFENSE; CASE AT BAR.— The concurrence of the minority of the victim and her relationship to the offender being special qualifying circumstances, which increases the penalty as opposed to a generic aggravating circumstance which only affects the period of the penalty, should be alleged in the information, because of the accused's right to be informed of the nature and cause of accusation against him. Existing jurisprudence instructs that the death penalty may be imposed only if the complaint or information has alleged and the evidence has proven both the minority of the victim and her relationship to the offender by the quantum of proof required for conviction. The information in this case alleged that accused-appellant, who is the step-father of XYZ, succeeded in having carnal knowledge of the latter, who was then thirteen (13) years of age. The birth certificate of XYZ presented during the trial clearly established that she was below 18 years old when the rape was committed on 4 February 1998. The records, however, revealed that accused-appellant and AAA were not legally married but were merely engaged in a common-law relationship. Legally speaking, the term "stepparent" refers to "an accused who is legally married to one of the parents of the victim." Although a common-law husband is subject to the punishment of death, if he commits rape against his wife's daughter, nevertheless, the death penalty cannot be imposed on accused-appellant because the relationship alleged in the information in Criminal Case No. 13546 is different with that which was actually proven. As such, accused-appellant should be sentenced with the lesser penalty of *reclusion perpetua.* This is in all fours with our rulings in *People v. Begino, People*

v. Santos, People v. Victor, and *People v. Ramirez.* As we stated in *Ramirez,* All told, the guilt of the accused has been clearly established beyond reasonable doubt. However, the death penalty was erroneously imposed for, as correctly argued by the accused and sustained by the Solicitor General, the qualifying circumstance of relationship has not been properly alleged in the Information. It appears that while the accused was the common-law spouse of Michelle's mother, Michelle was referred to in the Information as his "step-daughter." A step-daughter is defined as the daughter of one of the spouses by a former marriage. We have consistently ruled that any of the circumstances under Sec. 11 of RA 7659 the attendance of which mandates the penalty of death, is in the nature of qualifying circumstances which cannot be proved as such unless alleged in the Information. **Evidently, the technical flaw committed by the prosecution spared the accused from the gallows of death and it constrains us to reduce the penalty of death to *reclusion perpetua*.**

2. ID.; CRIMES AGAINST PERSONS; RAPE; PRINCIPLES WHICH GUIDE THE COURTS IN RESOLVING RAPE CASES.— Three principles guide the courts in resolving rape cases: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, ACCUSED MAY BE CONVICTED SOLELY ON THE TESTIMONY OF THE VICTIM; CASE AT BAR.— In the determination of guilt for the crime of rape, primordial is the credibility of the complainant's testimony because, in rape cases, the accused may be convicted solely on the testimony of the victim, provided it is credible, natural, convincing and consistent with human nature and the normal course of things. Here, the victim, in the painstaking and well-nigh degrading public trial, related her painful ordeal that she was raped by accused-appellant. Her testimony was found by the trial court, which had the undisputed

vantage in the evaluation and appreciation of testimonial evidence, to be more credible than that of the defense.

4. ID.; ID.; ID.; TESTIMONIES OF CHILD VICTIMS ARE GIVEN FULL WEIGHT AND CREDIT; REASONS.— Testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and maturity are generally badges of truth and sincerity.

5. ID.; ID.; ID.; FINDINGS OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES ARE ENTITLED TO THE HIGHEST RESPECT AND ARE NOT TO BE DISTURBED ON APPEAL.— The Court rebuffed accused-appellant's defense of denial. Aside from being weak, it is merely negative and self-serving evidence which pales in comparison to XYZ's and AAA's clear narration of facts and positive identification of the appellant. The testimony of XYZ, coupled with the medical findings of Dr. Muñoz, is enough to confirm the truthfulness of the charge. Deeply entrenched in jurisprudence is the rule that findings of the trial court on the credibility of witnesses are entitled to the highest respect and are not to be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied facts or circumstances of weight and substance which would have affected the result of the case.

6. ID.; ID.; ID.; POSITIVE DECLARATIONS OF A PROSECUTION WITNESS DESERVE MORE CREDENCE THAN THE NEGATIVE STATEMENTS OF THE ACCUSED.— Accused-appellant's contention that the criminal complaint filed against him was caused by ill motive on the part of AAA and XYZ deserves scant consideration. We cannot accept the claim that it was an offshoot of AAA's jealousy and of XYZ's grudge against him for living in with her mother and for forbidding her to go out with her male friends. It is a negative self-serving evidence which cannot be given greater weight than the testimony of credible witnesses who testified on affirmative matters. Between the positive declarations of a prosecution witness and the negative statements of the accused, the former deserves more credence.

7. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; CAN BE COMMITTED ANYWHERE, ANYTIME.— Accused-appellant's contention that it was improbable for the crime of rape to be committed considering that the whole household was sleeping almost side by side at that time the rape was allegedly committed is likewise devoid of merit. For the crime of rape to be committed, it is not necessary for the place to be ideal or the weather to be fine, for rapists bear no respect for locale and time when they carry out their evil deed. In numerous cases, the Court held that rape can be committed even in places where people congregate, in parks, along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which to many, would appear unlikely and high risk venues for its commission. Besides, there is no rule that rape can be committed only in seclusion.

8. ID.; ID.; ID.; INTIMIDATION; ESTABLISHED IN CASE AT BAR.— We, likewise, find no merit in appellant's contention that there was some sort of consent on the part of the victim since she failed to struggle and shout for help. Accused-appellant argues that the prosecution failed to establish force or intimidation; absence of which creates reasonable doubt upon his guilt. The presence of intimidation, which is purely subjective, cannot be tested by any hard and fast rule, but should be viewed in the light of the victim's perception and judgment at the time of the commission of the rape. Not all victims react in the same way — some people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion. Records of the case revealed that XYZ was coerced into submission because of her fear that she will be killed. She categorically declared that she tried to shout for help but accused-appellant gagged her and threatened to kill her if she will say anything. Physical resistance need not be established in rape cases when intimidation is exercised upon the victim who submits against her will because of fear for her life and personal safety. The force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other. A child like XYZ can only cower in fear and yield into submission. Rape is nothing more than

a conscious process of intimidation by which a man keeps a woman in a state of fear and humiliation. Thus, it is not even impossible for a victim of rape not to make an outcry against an unarmed assailant. In fact, the moral ascendancy and influence of accused-appellant, who during trial was established to be the live-in partner of the victim's mother and was exercising parental authority over the victim, can take the place of threat and intimidation.

9. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARD THEREOF, PROPER IN CASE AT BAR.— Although we affirm the decision of the Court of Appeals, we find it necessary to modify the civil liability of the appellant to include exemplary damages. The appellate court correctly ordered accused-appellant to pay the victim the amount of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages consistent with current jurisprudence on simple rape. However, the exemplary damages in the amount of ₱30,000.00 should also be included in line with recent case laws.

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.*:

We review in this appeal the 12 December 2007 decision[1] of the Court of Appeals (CA) in CA-G.R. CR- H.C. No. 00154, partially affirming the 22 April 2002 decision of the Regional Trial Court (RTC), Branch 31, Dumaguete City, Negros Oriental. The CA decision found appellant Manuel Aguilar (appellant) guilty beyond reasonable doubt of the crime of Simple Rape and sentenced him to suffer the penalty of *reclusion perpetua*.

[1] Penned by Associate Justice Priscilla Baltazar-Padilla with Associate Justices Isaias P. Dicdican and Francisco N. Diamante, concurring; CA *rollo*, pp 126-141.

In line with the ruling of this Court in *People v. Cabalquinto*,[2] the real name and identity of the rape victim, as well as the members of her immediate family, are not disclosed. Instead, the rape victim shall herein be referred to as XYZ; her mother, AAA; and her aunt, CCC.

THE FACTS

Appellant was charged before the RTC with the crime of rape in an Information,[3] the accusatory portion of which reads:

> That on February 4, 1998 at about 12:00 o'clock midnight at Sitio Sawa-an, Sto. Rosario, Sta. Catalina, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, with abuse of confidence, willfully, unlawfully and feloniously, did lie and succeeded in having carnal knowledge with a 13 year old minor [XYZ], accused's Step-daughter.
>
> Contrary to Article 335 of the Revised Penal Code.
>
> Dumaguete City, Philippines, April 17, 1998.

Upon arraignment, appellant pleaded not guilty to the crime charged. The prosecution presented XYZ, AAA and Dr. Rosita Muñoz as its witnesses. The appellant took the witness stand as the sole witness for the defense.

The victim in this case was, at the time of the incident, a 13-year-old lass, who, together with her siblings, lived with her mother and the latter's live-in partner, appellant Manuel Aguilar. XYZ is AAA's daughter with her deceased husband. The four other siblings of XYZ are AAA's children with accused-appellant.

XYZ testified that she was born on 26 January 1985. She declared that on that fateful evening of 4 February 1998, while she was asleep, accused took off her shorts and panty, laid on top of her and had sexual intercourse with her against her will. She wanted to shout but accused-appellant gagged her mouth with his hand and threatened to kill her if she will utter a word.

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[2] G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[3] Records, p. 1.

She averred that she felt intense pain in her vagina. Accused-appellant, who was at that time naked, was caught in the act by AAA.

In the morning of 5 February 1998, AAA brought XYZ to the police station. Thereafter, XYZ was required to undergo medical examination before the municipal health doctor of Sta. Catalina, Negros Oriental.

Dr. Rosita Muñoz testified for the prosecution and declared that XYZ came to her clinic at the Rural Health Unit of Sta. Catalina, Negros Oriental. She physically examined the victim and found that she had vaginal discharges. Considering that the clinic lacked laboratory equipments, she forwarded the vaginal discharges of the victim to the District Hospital of Bayawan, Negros Oriental for examination. The examination yielded the presence of spermatozoa, positively establishing that XYZ had undergone a very recent sexual activity. Dr. Muñoz issued a medical certificate certifying the presence of spermatozoa based on the laboratory results.

AAA testified that at about 12 midnight of 4 February 1998, she woke up to urinate and proceeded to the urinal located across the room. While groping in the dark on her way to the urinal, she accidentally touched the buttocks and the back of the body of the accused. The accused was naked and acting to lie on top of XYZ. When she lighted a lamp, AAA saw the naked accused at the right side of XYZ facing the latter. XYZ was then wearing only a T-shirt without shorts and underwear. When AAA asked accused-appellant what he did to XYZ, the accused-appellant did not reply. AAA then asked XYZ what the accused-appellant did to her and the latter revealed that she was raped by the accused-appellant. Immediately thereafter, XYZ ran towards the place of her aunt CCC.

The accused, for his part, denied having raped XYZ. He declared during the direct-examination that in the evening of 4 February 1998, he slept wearing only his underwear with the upper part of his body left bare and naked. He claimed that he was used to wearing only a brief without any clothing to cover his upper body everytime he sleeps at night. At 12 midnight

that evening, he urinated in the urinal located near the place where his two children and XYZ were sleeping. He was not able to finish urinating because there was someone who grabbed him from behind. It was at this time that his wife, AAA, asked him why he molested XYZ.

Accused-appellant denied the allegations against him. He maintained that his wife testified against him because he urinated in the urinal near the place where XYZ was sleeping. Moreover, AAA allegedly felt bad and jealous about his having conversations with their female neighbors. The filing of the complaint was AAA's way of getting back at him. With regard to XYZ, accused-appellant claimed that she harbored a grudge against him since he forbade her from going out with her male friends.

Accused-appellant also claimed that it was improbable for him to commit the offense considering that there were seven of them then sleeping in the house that evening. He argued that even assuming that he had carnal knowledge of XYZ, there was some sort of consent on the part of the victim since she failed to struggle and shout for help. He alleged that the absence of any showing of resistance casts reasonable doubt upon his guilt.

After trial on the merits, the RTC rendered a decision finding accused-appellant guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the capital penalty of death. The RTC further ordered accused-appellant to indemnify XYZ in the amount of ₱75,000.00. The dispositive portion of its judgment reads:

> Wherefore**,** xxx the Court finds accused Manuel Aguilar guilty beyond reasonable doubt of the crime of rape defined and [p]enalized under Article 335, as amended by Section 11 of Republic Act No. 7659, and sentence said accused the capital penalty of death. And, xxx, accused is hereby ordered to indemnify [XYZ] the amount of ₱75,000.00.[4]

[4] *Id.* at 107.

On intermediate review, the appellate court partially affirmed the ruling of the RTC. The Court of Appeals convicted the accused not of qualified rape but of simple rape in the following tenor:

> WHEREFORE**,** the assailed Decision of the Regional Trial Court dated April 22, 2002 is **PARTIALLY AFFIRMED**. Manuel Aguilar is hereby found and declared guilty beyond reasonable doubt of the crime of Simple Rape and is sentenced to suffer the penalty of *reclusion perpetua*. Accordingly, he is ordered to pay XYZ only ₱50,000.00 as civil indemnity. However, to conform with existing jurisprudence, he is likewise directed to pay ₱50,000.00 as moral damages.
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> SO ORDERED.[5]

The case is now on final review before us.

OUR RULING

We affirm the ruling of the appellate court that appellant Aguilar is guilty only of simple rape and not of qualified rape.

Article 335 of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as the "Anti-Rape Law of 1997," provides in part that:

> 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, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

The concurrence of the minority of the victim and her relationship to the offender being special qualifying circumstances, which increases the penalty as opposed to a generic aggravating circumstance which only affects the period of the penalty, should be alleged in the information, because of the accused's right to be informed of the nature and cause of accusation against

[5] *Rollo,* p. 19.

him.[6] Existing jurisprudence instructs that the death penalty may be imposed only if the complaint or information has alleged and the evidence has proven both the minority of the victim and her relationship to the offender by the quantum of proof required for conviction.[7]

The information in this case alleged that accused-appellant, who is the step-father of XYZ, succeeded in having carnal knowledge of the latter, who was then thirteen (13) years of age. The birth certificate of XYZ presented during the trial clearly established that she was below 18 years old when the rape was committed on 4 February 1998. The records, however, revealed that accused-appellant and AAA were not legally married but were merely engaged in a common-law relationship. Legally speaking, the term "stepparent" refers to "an accused who is legally married to one of the parents of the victim."[8] Although a common-law husband is subject to the punishment of death, if he commits rape against his wife's daughter, nevertheless, the death penalty cannot be imposed on accused-appellant because the relationship alleged in the information in Criminal Case No. 13546 is different with that which was actually proven. As such, accused-appellant should be sentenced with the lesser penalty of *reclusion perpetua.* This is in all fours with our rulings in *People v. Begino*,[9] *People v. Santos*,[10] *People v. Victor*,[11] and *People v. Ramirez.*[12] As we stated in *Ramirez,*

> All told, the guilt of the accused has been clearly established beyond reasonable doubt. However, the death penalty was erroneously imposed for, as correctly argued by the accused and sustained by the Solicitor General, the qualifying circumstance of relationship

[6] *People v. Ramos*, G.R. No. 129439, 25 September 1998, 296 SCRA 559, 575.

[7] *People v. Mauro*, 447 Phil. 207, 228-229 (2003).

[8] *People v. Escaño*, 427 Phil. 162, 180 (2002).

[9] G.R. No. 181246, 20 March 2009, 582 SCRA 189, 197-198.

[10] G.R. No. 145305, 26 June 2003, 452 SCRA 1046, 1067.

[11] G.R. No. 127904, 5 December 2002, 393 SCRA 472, 481.

[12] G.R. No. 136848, 29 November 2001, 371 SCRA 143, 150.

has not been properly alleged in the Information. It appears that while the accused was the common-law spouse of Michelle's mother, Michelle was referred to in the Information as his "step-daughter." A step-daughter is defined as the daughter of one of the spouses by a former marriage. We have consistently ruled that any of the circumstances under Sec. 11 of RA 7659 the attendance of which mandates the penalty of death, is in the nature of qualifying circumstances which cannot be proved as such unless alleged in the Information. **Evidently, the technical flaw committed by the prosecution spared the accused from the gallows of death and it constrains us to reduce the penalty of death to *reclusion perpetua*.**[13] *(Emphasis supplied.)*

Three principles guide the courts in resolving rape cases: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[14]

In the determination of guilt for the crime of rape, primordial is the credibility of the complainant's testimony because, in rape cases, the accused may be convicted solely on the testimony of the victim, provided it is credible, natural, convincing and consistent with human nature and the normal course of things.[15] Here, the victim, in the painstaking and well-nigh degrading public trial, related her painful ordeal that she was raped by accused-appellant. Her testimony was found by the trial court, which had the undisputed vantage in the evaluation and

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[13] Citing *People v. Dimapilis*, G.R. Nos. 128619-21, 17 December 1998, 300 SCRA 279; *People v. Medina*, G.R. No. 126575, 11 December 1998, 300 SCRA 98.

[14] *People v. Glivano*, G.R. No. 177565, 28 January 2008, 542 SCRA 656, 662 citing *People v. Malones*, 469 Phil. 301, 318 (2004).

[15] *People v. Pascua*, 462 Phil. 245, 252 (2003).

appreciation of testimonial evidence, to be more credible than that of the defense.[16]

The accused-appellant was convicted beyond reasonable doubt of the crime of rape on the basis of the following: (1) XYZ's credible testimony concerning the rape incident; (2) XYZ's positive identification of the accused-appellant as the person who raped her; (3) AAA's testimony regarding the alleged incident; (4) medical examination report showing the presence of spermatozoa in XYZ's vagina evidencing recent sexual intercourse; and (5) absence of ill motive on XYZ's and AAA's part in filing the complaint.

Testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and maturity are generally badges of truth and sincerity.[17]

The Court rebuffed accused-appellant's defense of denial. Aside from being weak, it is merely negative and self-serving evidence which pales in comparison to XYZ's and AAA's clear narration of facts and positive identification of the appellant. The testimony of XYZ, coupled with the medical findings of Dr. Muñoz, is enough to confirm the truthfulness of the charge. Deeply entrenched in jurisprudence is the rule that findings of the trial court on the credibility of witnesses are entitled to the highest respect and are not to be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied facts or circumstances of weight and substance which would have affected the result of the case.[18]

Accused-appellant's contention that the criminal complaint filed against him was caused by ill motive on the part of AAA

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[16] Records, p. 106.

[17] *People v. Corpuz*, G.R. No. 168101, 13 February 2006, 482 SCRA 435, 448.

[18] *People v. Sta. Ana*, G.R. Nos. 115657-59, 26 June 1998, 291 SCRA 188, 202.

and XYZ deserves scant consideration. We cannot accept the claim that it was an offshoot of AAA's jealousy and of XYZ's grudge against him for living in with her mother and for forbidding her to go out with her male friends. It is a negative self-serving evidence which cannot be given greater weight than the testimony of credible witnesses who testified on affirmative matters. Between the positive declarations of a prosecution witness and the negative statements of the accused, the former deserves more credence.[19]

Accused-appellant's contention that it was improbable for the crime of rape to be committed considering that the whole household was sleeping almost side by side at that time the rape was allegedly committed is likewise devoid of merit. For the crime of rape to be committed, it is not necessary for the place to be ideal or the weather to be fine, for rapists bear no respect for locale and time when they carry out their evil deed.[20] In numerous cases, the Court held that rape can be committed even in places where people congregate, in parks, along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which to many, would appear unlikely and high risk venues for its commission. Besides, there is no rule that rape can be committed only in seclusion.[21]

We, likewise, find no merit in appellant's contention that there was some sort of consent on the part of the victim since she failed to struggle and shout for help. Accused-appellant argues that the prosecution failed to establish force or intimidation; absence of which creates reasonable doubt upon his guilt. The presence of intimidation, which is purely subjective, cannot be tested by any hard and fast rule, but should be viewed in the light of the victim's perception and judgment at the time of the

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[19] *People v. Amante*, 440 Phil. 561, 669-670 (2002).

[20] *People v. Barcena*, G.R. No. 168737, 16 February 2006, 482 SCRA 543, 555.

[21] *People v. Tan*, Jr., G.R. Nos. 103134-40, 20 November 1996, 264 SCRA 425, 439.

commission of the rape.[22] Not all victims react in the same way — some people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion.[23] Records of the case revealed that XYZ was coerced into submission because of her fear that she will be killed.[24] She categorically declared that she tried to shout for help but accused-appellant gagged her and threatened to kill her if she will say anything. Physical resistance need not be established in rape cases when intimidation is exercised upon the victim who submits against her will because of fear for her life and personal safety. The force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other. A child like XYZ can only cower in fear and yield into submission. Rape is nothing more than a conscious process of intimidation by which a man keeps a woman in a state of fear and humiliation. Thus, it is not even impossible for a victim of rape not to make an outcry against an unarmed assailant.[25] In fact, the moral ascendancy and influence of accused-appellant, who during trial was established to be the live-in partner of the victim's mother and was exercising parental authority over the victim, can take the place of threat and intimidation.

Although we affirm the decision of the Court of Appeals, we find it necessary to modify the civil liability of the appellant to include exemplary damages. The appellate court correctly ordered accused-appellant to pay the victim the amount of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages consistent with current jurisprudence on simple rape. However, the exemplary damages in the amount of ₱30,000.00 should also be included in line with recent case laws.

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[22] *People v. Santos*, 452 Phil. 1046, 1061 (2003).

[23] *People v. Baldo*, G.R. No. 175238, 24 February 2009, 580 SCRA 225, 233.

[24] TSN, 1 October 2001, pp. 7-8.

[25] *People v. Barcena*, *supra* note 14 at 554.

In *People vs. Anthony R. Rante*,[26] citing *People vs. Antonio D. Dalisay*[27] and *People vs. Cristino Cañada*,[28] the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

WHEREFORE, premises considered, we hereby affirm with modification the decision dated 12 December 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00154 finding Manuel Aguilar *GUILTY* beyond reasonable doubt of the crime of Simple Rape. In addition to the awards of civil indemnity and moral damages in the amount of ₱50,000.00 each, he is further ordered to pay ₱30,000.00 as exemplary damages.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Del Castillo, JJ.,* concur.

SECOND DIVISION

[G.R. No. 186192. August 25, 2010]

THE HEIRS OF MATEO PIDACAN AND ROMANA BIGO, NAMELY: PACITA PIDACAN *VDA. DE* ZUBIRI AND ADELA PIDACAN *VDA. DE* ROBLES, *petitioners, vs.* **AIR TRANSPORTATION OFFICE, represented by its Acting Director BIENVENIDO MANGA,** *respondent.*

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[26] G. R. No. 184809, 29 March 2010.

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

[28] G. R. No. 175317, 02 October 2009, 602 SCRA 378.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; DETERMINATION OF JUST COMPENSATION IS A JUDICIAL PREROGATIVE.— Well-settled in this jurisdiction that the determination of just compensation is a judicial prerogative. Thus, in *Export Processing Zone Authority v. Judge Dulay*, we declared: The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.

2. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF JUDGMENTS; RATIONALE.— It is almost trite to say that execution is the fruit and the end of the suit and is the life of the law. A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party. Litigation must end sometime and somewhere. An effective and efficient administration of justice requires that, once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Courts must, therefore, guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them. Petitioners have been deprived of the beneficial use and enjoyment of their property for a considerable length of time. Now that they prevailed before this Court, it would be highly unjust and inequitable under the particular circumstances that payment of just compensation be withheld from them. We, therefore, write *finis* to this litigation.

APPEARANCES OF COUNSEL

Puno & Associates Law Office for petitioners.

The Government Corporate Counsel for Air Transportation Office.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure praying that the Orders[2] issued by the Regional Trial Court (RTC) of San Jose, Occidental Mindoro, Branch 46, dated June 23, 2008 and January 23, 2009, be set aside and that said RTC be directed to issue a Writ of Execution enforcing this Court's Decision in *Heirs of Mateo Pidacan and Romana Bigo v. Air Transportation Office (ATO)*.[3]

The facts are summarized as follows:

In 1935, spouses Mateo Pidacan and Romana Bigo, predecessors-in-interest of petitioners-heirs namely, Pacita Pidacan *Vda. de* Zubiri and Adela Pidacan *Vda. de* Robles (petitioners), acquired a parcel of land with an area of about 22 hectares, situated in San Jose, Occidental Mindoro (the property). Thereafter, Original Certificate of Title (OCT) No. 2204 was issued in favor of said spouses.

However, in 1948, respondent Air Transportation Office (ATO)[4] used a portion of the property as an airport. In 1974, the ATO constructed a perimeter fence and a new terminal building on the property. The ATO also lengthened, widened, and cemented the airport's runway. Petitioners demanded from ATO the payment of the value of the property as well as the rentals for the use thereof but ATO refused. Eventually in 1988, OCT No. 2204 was cancelled and Transfer Certificate of Title No. T-7160 was issued in favor of petitioners. Despite this development, ATO still refused to pay petitioners.

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[1] *Rollo,* pp. 9-21.

[2] *Id.* at 51-54 and 60-61.

[3] Penned by Senior Associate Justice Leonardo A. Quisumbing (retired), with Associate Justices Antonio T. Carpio, Dante O. Tinga (retired) and Presbitero J. Velasco, Jr., concurring; G.R. No. 162779, June 15, 2007, 524 SCRA 679.

[4] Now known as Civil Aviation Authority of the Philippines (CAAP).

Petitioners filed a complaint with the RTC against ATO for payment of the value of the property and rentals due thereon. In 1994, the RTC promulgated a decision, ordering ATO to pay rentals and the value of the land at ₱89.00 per square meter. ATO appealed to the Court of Appeals (CA) which remanded the case to the court *a quo* for further proceedings. The CA also held that just compensation should had been determined as of the time the property was taken for public use.

On remand, the RTC ruled again in favor of petitioners, ordering ATO, among others, to pay petitioners the amount of ₱304.00 per sq m for the area expropriated or a total of ₱65,584,048.00, imposing interest at the rate of 12% *per annum* from February 1, 2001 until full payment, and to pay monthly rentals for the use and occupation of the property from January 1, 1957 to January 31, 2001, for a total amount of ₱6,249,645.40, with interest at the rate of 12% *per annum* until the same is fully paid.

Undaunted, the ATO went to the CA, which again remanded the case to the court *a quo* for the determination of just compensation on the basis of the market value prevailing in 1948. Petitioners moved for reconsideration, but the motion was denied. Aggrieved, petitioners filed a petition for review on *certiorari* before this Court.

On June 15, 2007, we ruled in favor of petitioners, holding that ATO's act of converting petitioners' private property into an airport came within the purview of eminent domain and as a consequence, petitioners were completely deprived of the beneficial use and enjoyment of their property. We declared that justice and fairness dictate that the appropriate reckoning point for the valuation of petitioners' property was when the RTC made its order of expropriation in 2001. However, we deleted the RTC's award of rental payments for lack of evidence. Thus, we disposed of the case in this wise:

WHEREFORE, the petition is GRANTED. The assailed Decision dated August 20, 2003 and the Resolution dated March 17, 2004 of the Court of Appeals in CA-G.R. CV No. 72404 are SET ASIDE.

The Decision dated February 1, 2001 of the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46 in Civil Case No. R-800 is AFFIRMED with MODIFICATION, as follows:

1. The actual area occupied by respondent ATO covered by Transfer Certificate of Title No. T-7160, totaling 215,737 square meters[,] is declared expropriated in favor of the ATO.

2. The ATO is ordered to pay petitioners the amount of ₱304.39 per square meter for the area expropriated, or a total of ₱65,668,185.43 with interest at the rate of 6% *per annum* from February 1, 2001, until the same is fully paid.

No pronouncement as to costs.

SO ORDERED.[5]

On July 10, 2007, ATO filed a Motion for Partial Reconsideration which we denied with finality in our Resolution[6] dated September 12, 2007. On October 25, 2007, Entry of Judgment[7] was made. Thus, on February 20, 2008, petitioners filed a Motion for Execution[8] before the RTC. On February 27, 2008, the ATO, through the Office of the Solicitor General, filed an Opposition[9] to petitioners' Motion.

On June 23, 2008, the RTC issued an Order denying petitioners' Motion for Execution on the ground that the prosecution, enforcement, or satisfaction of State liability must be pursued in accordance with the rules and procedures laid down in Commonwealth Act No. 327,[10] as amended by Presidential Decree (P.D.) No. 1445.[11] The RTC also relied on this Court's Administrative Circular No. 10-2000, dated October 25, 2000,

[5] *Heirs of Mateo Pidacan and Romana Bigo v. Air Transportation Office (ATO)*, *supra* note 3, at 688-689.

[6] *Rollo*, p. 35.

[7] *Id.* at 36-38.

[8] *Id.* at 39-41.

[9] *Id.* at 45-50.

[10] An Act Fixing the Time Within Which the Auditor General Shall Render His Decisions and Prescribing the Manner of Appeal Therefrom.

[11] The Government Auditing Code of the Philippines.

which enjoined all judges to observe utmost caution, prudence, and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units. Thus, the RTC disposed:

> WHEREFORE, foregoing premises considered, the Motion For the Issuance of a Writ of Execution filed by the plaintiffs is hereby **DENIED**. However, the plaintiffs are implored to file and pursue their monetary claims against the government with the Commission on Audit pursuant to paragraph 4, Section 6 of P.D. No. 1445 v*is-a-vis* Rule VIII of [the] 1997 COA Revised Rules of Procedure.
>
> SO ORDERED.[12]

Petitioners filed their Motion for Reconsideration[13] which the RTC, however, denied in its Order dated January 23, 2009.

Hence, this Petition raising the following issues:

1. W[H]ETHER OR NOT RESPONDENT AIR TRANSPORTATION OFFICE IS ALREADY IN LEGAL ESTOPPEL TO OPPOSE PETITIONERS' MOTION FOR EXECUTION BECAUSE IT HAS LITIGATED AND OPPOSED THE CLAIM OF THE PETITIONERS FROM THE RTC OF SAN JOSE, OCCIDENTAL MINDORO, THE COURT OF APPEALS, AND ALL THE WAY UP TO THIS HONORABLE COURT[;]
2. WHETHER OR NOT THE FINAL DECISION OF THIS HONORABLE COURT CANNOT BE EXECUTED BY THE TRIAL COURT IN THE LIGHT OF PARAGRAPH 4, SECTION 6 OF P.D. NO. 1445 *VIS-A-VIS* RULE VIII OF THE 1997 COA REVISED RULES OF PROCEDURE AND ADMINISTRATIVE CIRCULAR NO. 10-2000, DATED OCTOBER 25, 2000[; AND]
3. IN THE LIGHT OF THE FINAL DECISION OF THIS HONORABLE COURT[,] IS IT NOT THAT RESPONDENT AIR TRANSPORTATION OFFICE IS THE ONE WHO IS LEGALLY BOUND TO PURSUE AND GET THE MONETARY CLAIM OF THE PETITIONERS AS DECIDED

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[12] *Rollo*, p. 54.

[13] *Id.* at 55-57.

BY THIS HONORABLE COURT FROM OTHER GOVERNMENT OFFICES[?][14]

Petitioners claim that ATO is now in estoppel because it did not invoke any doctrine which provides that any decision against ATO cannot be executed; that Administrative Circular No. 10-2000 is merely intended to prevent possible circumvention of Commission on Audit (COA) rules and regulations which cannot happen in this case as this Court already decided with finality on ATO's liability; that said circular only enjoins judges to observe utmost caution but does not *per se* prohibit the issuance of writs of execution for money claims against the government;[15] and that it is incumbent upon the RTC to direct ATO to look for the necessary funds in order to satisfy the decision of this Court. Moreover, petitioners manifest that, on March 3, 2009, Ruben F. Ciron, Director General of ATO, wrote petitioners' counsel,[16] the pertinent portions of which state:

This is in connection with your claim for compensation over the portion of lot occupied by San Jose Airport subject of the case named *Heirs of Mateo Pidacan, et al. (Petitioners) v. Air Transportation Office* (Respondent), docketed as G.R. No. 162779, covered by TCT No. 7160 affecting 215,737 square meters ordering the defendant to pay the plaintiffs just compensation with legal interest.

In this regard, we are pleased to inform you that the funding for the initial payment for the acquisition of the above-described lot encroached by San Jose Airport was earmarked in the 2007 General Appropriation[s] Act for ATO-DOTC Infrastructure Program. However, its release was held by the Department of Budget and Management (DBM) with the advice to file the individual claims directly with the Commission for Adjudication by the Commission Proper, Commission on Audit, Commonwealth Avenue, Quezon City on a *quantum meruit* basis.[17]

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[14] *Supra* note 1, at 13.

[15] *Id*.

[16] Reply; *rollo*, pp. 94-97.

[17] Annex "A" of Reply.

In its Comment,[18] ATO, through the Office of the Government Corporate Counsel (OGCC), argues that the RTC faithfully complied with Administrative Circular No. 10-2000 by not indiscriminately issuing any writ of execution to enforce money claims against the government in accordance with existing jurisprudence and the provisions of P.D. No. 1445. Section 26[19] of P.D. No. 1445 provides that all money claims against the government or any of its subdivisions, agencies, and instrumentalities must be filed with the COA. The OGCC also submits that petitioners failed to properly observe the principle of the hierarchy of courts by directly filing their Petition before this Court without raising pure questions of law.

We grant the Petition.

Well-settled in this jurisdiction that the determination of just compensation is a judicial prerogative.[20] Thus, in *Export Processing Zone Authority v. Judge Dulay*,[21] we declared:

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[18] *Rollo*, pp. 77-84.

[19] SECTION 26. General jurisdiction. The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government.

[20] *Ortega v. City of Cebu*, G.R. Nos. 181562-63 and 181583-84, October 2, 2009, 602 SCRA 601, 607-608; *Land Bank of the Philippines v. Dumlao*, G.R. No. 167809, November 27, 2008, 572 SCRA 108, 122; *Land Bank of the Philippines v. Celada*, G.R. No. 164876, January 23, 2006, 479 SCRA 495, 505.

[21] 233 Phil. 313, 326 (1987).

> The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.

In view of this mandate, this Court has finally spoken in our Decision on June 15, 2007, declaring the property to be expropriated in favor of ATO and ordering the latter to pay petitioners just compensation. This ruling had already become final and executory. Our Decision is clear and unambiguous. Nothing is left to be done, save for its execution.

Moreover, it bears stressing that the Director General of ATO informed petitioners that the funding for the initial payment for the acquisition of the property was already earmarked in the 2007 General Appropriations Act for ATO-Department of Transportation and Communication Infrastructure Program. Under the circumstances, such earmarking may be considered as the appropriation required by law in order that petitioners may be paid just compensation long due them.

Our ruling in *EPG Construction Co. v. Hon. Vigilar*,[22] citing *Amigable v. Cuenca, etc., et al.*[23] and *Ministerio, et al. v. CFI of Cebu, etc., et al.*,[24] is instructive:

> To our mind, it would be the apex of injustice and highly inequitable for us to defeat petitioners-contractors' right to be duly compensated for actual work performed and services rendered, where both the government and the public have, for years, received and accepted benefits from said housing project and reaped the fruits of petitioners-contractors' honest toil and labor.

Incidentally, respondent likewise argues that the State may not be sued in the instant case, invoking the constitutional doctrine of

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[22] 407 Phil. 53, 64-66 (2001).

[23] 150 Phil. 422 (1972).

[24] 148-B Phil. 474 (1971).

Non-suability of the State, otherwise known as the *Royal Prerogative of Dishonesty*.

Respondent's argument is misplaced inasmuch as the Principle of State Immunity finds no application in the case before us.

Under these circumstances, respondent may not validly invoke the *Royal Prerogative of Dishonesty* and conveniently hide under the *State's cloak of invincibility against suit*, considering that this principle yields to certain settled exceptions. True enough, the rule, in any case, is not absolute for it does not say that the state may not be sued under any circumstance.

Thus, in *Amigable v. Cuenca*, this Court, in effect, shred the protective shroud which shields the State from suit, reiterating our decree in the landmark case of *Ministerio v. CFI of Cebu* that "*the doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen.*" It is just as important, if not more so, that there be fidelity to legal norms on the part of officialdom if the rule of law were to be maintained.

Although the *Amigable* and *Ministerio* cases generously tackled the issue of the State's immunity from suit *vis-a-vis* the payment of just compensation for expropriated property, this Court nonetheless finds the doctrine enunciated in the aforementioned cases applicable to the instant controversy, considering that the ends of justice would be subverted if we were to uphold, in this particular instance, the State's immunity from suit.

To be sure, this Court — as the staunch guardian of the citizens' rights and welfare — cannot sanction an injustice so patent on its face, and allow itself to be an instrument in the perpetration thereof. Justice and equity sternly demand that the State's cloak of invincibility against suit be shred in this particular instance, and that petitioners-contractors be duly compensated — on the basis of *quantum meruit* — for construction done on the public works housing project.

It is almost trite to say that execution is the fruit and the end of the suit and is the life of the law. A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party. Litigation must end sometime and somewhere. An effective and efficient administration of justice requires that, once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Courts must, therefore, guard against any

scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.[25] Petitioners have been deprived of the beneficial use and enjoyment of their property for a considerable length of time. Now that they prevailed before this Court, it would be highly unjust and inequitable under the particular circumstances that payment of just compensation be withheld from them. We, therefore, write *finis* to this litigation.

WHEREFORE, the instant Petition is *GRANTED*. The Orders issued by the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, dated June 23, 2008 and January 23, 2009, are hereby *SET ASIDE*. The said Regional Trial Court is hereby *DIRECTED* to issue a Writ of Execution enforcing this Court's Decision in *Heirs of Mateo Pidacan and Romana Bigo v. Air Transportation Office (ATO)*[26] dated June 15, 2007. No pronouncement as to costs.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.*, concur.

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[25] *National Power Corporation v. Omar G. Maruhom, Elias G. Maruhom, Bucay G. Maruhom, Mamod G. Maruhom, Farouk G. Maruhom, Hidjara G. Maruhom, Rocania G. Maruhom, Potrisam G. Maruhom, Lumba G. Maruhom, Sinab G. Maruhom, Acmad G. Maruhom, Solayman G. Maruhom, Mohamad M. Ibrahim, Cairoronesa M. Ibrahim, and Lucman Ibrahim, represented by his heirs Adora B. Ibrahim, Nasser B. Ibrahim, Jamalodin B. Ibrahim, Rajid Nabbel B. Ibrahim, Ameer B. Ibrahim, and Sarah Aizah B. Ibrahim*, G.R. No. 183297, December 23, 2009, citing *La Campana Development Corporation v. Development Bank of the Philippines*, G.R. No. 146157, February 13, 2009, 579 SCRA 137, 159.

[26] *Supra* note 3.

THIRD DIVISION

[G.R. No. 186526. August 25, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FEDERICO CAMPOS** ***y*** **RANILE,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF *SHABU*; ELEMENTS FOR SUCCESSFUL PROSECUTION THEREOF.— The alleged procedural lapses in the conduct of the buy-bust operation, namely the lack of prior coordination with the PDEA and the failure to inventory and photograph the confiscated items immediately after the operation, are not fatal to the prosecution's cause. In order to successfully prosecute a charge for violation of Sec. 5, Art. II of Republic Act No. 9165 involving entrapment or buy-bust operations, it must only be proven that the sale took place and that it was the accused who undertook it. *Cruz vs. People* illuminates: A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. **For the successful prosecution of the illegal sale of *shabu*, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.** Thus, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction. The absence of an inventory of personal effects seized from appellant becomes immaterial to the *legitimacy* of the buy-bust operation for it is enough that it is established that the operation was indeed conducted and that the identity of the seller and the drugs subject of the sale are proven.

2. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULARITY OF PERFORMANCE OF OFFICIAL DUTY BY THE

POLICE OFFICERS; NOT DISPUTED IN CASE AT BAR.— In the present case, the presumption that official duty had been regularly performed by the police officers had remained uncontroverted, given the failure of the defense to present clear and convincing evidence that PO2 Panlilio and PO1 Collado were impelled by improper motive to falsely charge appellant.

3. ID.; ID.; CREDIBILITY OF WITNESSES; FRAME-UP; CAN EASILY BE CONCOCTED, HENCE MUST BE PROVEN BY CLEAR AND CONVINCING EVIDENCE.— Appellant's defense of frame-up fails. For, like alibi, it can easily be concocted, hence, it must be proven by clear and convincing evidence. This appellant failed to discharge.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

Federico Campos *y* Ranile (appellant) challenges the Court of Appeals decision[1] of July 31, 2008 affirming the Joint Decision[2] of Branch 95 of the Regional Trial Court (RTC) of Quezon City which convicted him of selling dangerous drugs.

Appellant was charged with violation of Section 5, Article II of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act) allegedly committed as follows:

That on or about the 25th day of February, 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 and feloniously sell, dispense, deliver, transport, distribute or act as broker in the said transaction

[1] *Rollo*, pp. 2-20. Penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr.

[2] Records, pp. 123-132. Penned by Judge Henry Jean-Paul Inting.

zero point sixteen (0.16) gram of Methylamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW. (Criminal Case No. Q-04-125078) (underscoring supplied)

The case was consolidated with Criminal Case No. Q-04-125079 which charged Joel Jaitin *y* Dano (Jaitin) with violation of Section 11 of Art. II of the same law, allegedly committed as follows:

That on or about the 25th day of February, 2004, in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any dangerous drug, did then and there, willfully and unlawfully and knowingly have in his possession and control zero point thirteen (0.13) gram of Methylamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW. (underscoring supplied)

The prosecution presented PO2 Manny Panlilio (PO2 Panlilio) and PO1 Cecil Collado (PO1 Collado), the police officers who participated in the buy-bust operation. The testimony of Engr. Leonardo Cabonillo, the Forensic Chemist of the Philippine National Police (PNP) who tested the drug specimen, as well as that of PO1 Judy de Jesus, the police investigator assigned to the case, was dispensed with by agreement of the parties.

From the evidence for the prosecution, the following version is culled:

On February 25, 2004, a confidential informant reported to P/Chief Insp. Paterno, head of the Talipapa Police Station at Barangay Baesa, Quezon City, that a certain person known as Federico Campos was engaged in selling illegal drugs in said *barangay*. A buy-bust team was thereupon created, composed of PO2 Panlilio who was designated as the poseur-buyer and given a 500 peso bill which he marked with his initials "MSP," PO1 Collado, SPO4 An, SPO2 Sevilla, SPO1 Catiis, and PO1 Adona.

On board two vehicles, the team along with the informant proceeded to F. Carlos St., Barangay Baesa where the informant

saw appellant and a male companion, later identified to be Jaitin. The informant then introduced PO2 Panlilio to appellant as a friend who wanted to buy *shabu*, whereupon PO2 Panlilio remarked that he wanted to buy ₱500 worth. As appellant agreed, PO2 Panlilio gave the initialed 500 peso bill to him and, in exchange, appellant gave PO2 Panlilio a plastic sachet containing white crystalline substance. PO2 Panlilio at once signaled his team members to close in, introduced himself as a police officer, and arrested appellant from whom he recovered the 500 peso bill. PO1 Collado then arrested Jaitin from whom he recovered a plastic sachet containing white crystalline substance.

The team then brought appellant and Jaitin to the police station and turned them over to the desk officer. PO2 Panlilio marked the plastic sachet he received from appellant with his (PO2 Panlilio's) initials and turned it over, together with the initialed 500 peso bill, to the desk officer. PO2 Collado likewise marked the plastic sachet he seized from Jaitin with his own initials "CCC" and turned it over to the desk officer. The substance inside the plastic sachets were found positive for Methylamphetamine Hydrochloride or *shabu*. That received from appellant weighed 0.16 gram, while that seized from Jaitin weighed 0.13 gram.

Appellant denied the accusation and claimed that he was framed-up. His version follows:

At around 3:00 o'clock in the morning of February 25, 2004, while he and his live-in partner Rachel Macapagal were inside his house, PO2 Panlilio, together with three men, barged inside looking for a certain "Bunso." Failing to find "Bunso," the police officers brought him and Rachel to the police station on board a mobile car where he first met Jaitin.

At the police station, the officers asked appellant if he knew one "Bunso," to which he replied in the negative. The officers also talked to Rachel, threatening to file a case against appellant if they fail to produce ₱10,000. He told the officers that he did not have such amount, following which the officers remarked "*tuluyan na yan*." He was thereafter brought before the inquest prosecutor.

The trial court, by Joint Decision, convicted appellant as charged.

As for Jaitin who jumped bail and has remained at large, the trial court convicted him as charged.

Appellant appealed to the Court of Appeals before which he contended that the prosecution failed to prove his guilt beyond reasonable doubt; that there was no showing that the police officers coordinated with the Philippine Drug Enforcement Agency (PDEA) before conducting the buy-bust operation, contrary to Sec. 86 (a) of the Implementing Rules of R.A. No. 9165; that there was no showing that the *shabu* marked in evidence in court was the same allegedly confiscated from him; and that the police officers failed to conduct a physical inventory of and photograph the confiscated item immediately after confiscation as required under Sec. 21 (1) of the law, thus raising doubt as to his guilt.

By the assailed Decision, the appellate court *affirmed* the trial court's decision, hence the present recourse wherein appellant advances the same issues he raised before the appellate court.

The appeal fails.

The alleged procedural lapses in the conduct of the buy-bust operation, namely the lack of prior coordination with the PDEA and the failure to inventory and photograph the confiscated items immediately after the operation, are not fatal to the prosecution's cause.

In order to successfully prosecute a charge for violation of Sec. 5, Art. II of Republic Act No. 9165 involving entrapment or buy-bust operations, it must only be proven that the sale took place and that it was the accused who undertook it. *Cruz vs. People*[3] illuminates:

> A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. **For the**

[3] G.R. No. 164580, February 6, 2009, 578 SCRA 147.

successful prosecution of the illegal sale of *shabu*, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. Thus, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction. (emphasis and underscoring supplied)

The absence of an inventory of personal effects seized from appellant becomes immaterial to the *legitimacy* of the buy-bust operation for it is enough that it is established that the operation was indeed conducted and that the identity of the seller and the drugs subject of the sale are proven. *People v. Concepcion*[4] so instructs:

After going over the evidence on record, we find that there, indeed, was a buy-bust operation involving appellants. **The prosecution's failure to submit in evidence the required physical inventory of the seized drugs and the photograph pursuant to Section 21, Article II of Republic Act No. 9165 will not exonerate appellants**. **Non-compliance with said section is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible**. **What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items**, as the same would be utilized in the determination of the guilt or innocence of the accused. (emphasis supplied)

People v. De Mesa[5] in fact is emphatic:

The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. **Appellants in this case bear the burden of showing that the evidence was tampered or meddled with in order to overcome a presumption of regularity** in the handling of exhibits by public officers and a

[4] G.R. No. 178876, June 27, 2008, 556 SCRA 421.

[5] G.R. No. 188570, July 6, 2010.

presumption that public officers properly discharged their duties. (emphasis and underscoring supplied)

In the present case, the presumption that official duty had been regularly performed by the police officers had remained uncontroverted, given the failure of the defense to present clear and convincing evidence that PO2 Panlilio and PO1 Collado were impelled by improper motive[6] to falsely charge appellant.

People v. Bernardino[7] where the accused was convicted of illegal possession but acquitted of illegal sale of *shabu* due to doubts as to the chain of custody is not on four squares with the present case. In said case, while the forensic chemist duly identified the *shabu* she examined and testified on the results thereof, her testimony merely referred to the specimens submitted by the apprehending officer, hence, the conclusion that "no clear specific link exists between the examined specimen and the *shabu* allegedly sold at the buy-bust except by inference," for there was no segregation of which sachets of shabu submitted were for the charge of illegal sale or for the charge of illegal possession. The factual milieu in *Bernardino* thus differs from that of the present case, there being no question that there was only one plastic sachet of *shabu* confiscated from appellant to give rise to confusion during its laboratory examination and presentation in evidence.

Appellant's defense of frame-up fails. For, like alibi, it can easily be concocted, hence, it must be proven by clear and convincing evidence. This appellant failed to discharge.[8]

WHEREFORE, the Decision of the Court of Appeals dated July 31, 2008 affirming the Joint Decision dated February 6, 2007 of the Regional Trial Court (RTC) of Quezon City, Branch 95, finding appellant Federico Campos *y* Ranile guilty

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[6] Vide *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 454.

[7] G.R. No. 171088, October 2, 2009, 602 SCRA 270.

[8] Vide *People v. Agulay*, G.R. No. 181747, September 26, 2008, 566 SCRA 571.

beyond reasonable doubt of violating Sec. 5, Art. II, Republic Act No. 9165 is *AFFIRMED*.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

THIRD DIVISION

[G.R. No. 186557. August 25, 2010]

NEGROS METAL CORPORATION, *petitioner, vs.* **ARMELO J. LAMAYO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION; LABOR ARBITER; HAS ORIGINAL AND EXCLUSIVE JURISDICTION OVER TERMINATION DISPUTES; TERMINATION DISPUTES, BY EXPRESS AGREEMENT OF THE PARTIES, MAY BE BROUGHT TO VOLUNTARY ARBITRATION; CASE AT BAR.— Under Art. 217, it is clear that a **labor arbiter** has *original* and *exclusive* jurisdiction over termination disputes. On the other hand, under Article 261, a **voluntary arbitrator** has *original* and *exclusive* jurisdiction over grievances arising from the interpretation or enforcement of company policies. As a general rule then, termination disputes should be brought before a labor arbiter, except when the parties, under Art. 262, unmistakably express that they agree to submit the same to voluntary arbitration. In the present case, the CBA provision on grievance machinery being invoked by petitioner does not expressly state that termination disputes are included in the ambit of what may be brought before the company's grievance machinery. xxx Even assuming, however, that the suspension of an employee may

be considered as a "disagreement" which bears on the "application and interpretation of any of the provisions" of the CBA, respondent could not have bound himself to bring the matter of his suspension to grievance procedure or voluntary arbitration in light of the documented fact that he had resigned from the union more than a year before his suspension, not to mention the fact that he denied having a hand in the preparation of the union president Ronquillo's letter invoking the grievance procedure.

2. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF ADMINISTRATIVE OFFICIALS, SUCH AS LABOR ARBITERS, ARE ACCORDED BY THE COURTS NOT ONLY RESPECT BUT FINALITY.— [T]he Court sustains the Labor Arbiter's ruling that respondent was illegally dismissed absent a showing that he was accorded due process when he was summarily terminated. The Court is not a trier of facts. It is not tasked to review the evidence on record, documentary and testimonial, and reassess the probative weight thereof, especially in view of the well-entrenched rule that findings of fact of administrative officials, such as labor arbiters, who have acquired expertise on account of their specialized jurisdiction are accorded by the courts not only respect but, most often, with finality, particularly when affirmed on appeal.

APPEARANCES OF COUNSEL

Joselito T. Bayatan for petitioner.
Charlie L. Bancolo for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Armelo J. Lamayo (respondent) began working for Negros Metal Corporation (petitioner or the company) in September 1999 as a machinist.

Sometime in May 2002, while respondent was at the company's foundry grinding some tools he was using, William Uy, Sr. (Uy), company manager, called his attention why he was using the

grinder there to which he replied that since the machine there was bigger, he would finish his work faster.

Respondent's explanation was found unsatisfactory, hence, he was, via memorandum, charged of loitering and warned.[1] Taking the warning as a three-day suspension as penalized under company rules, respondent reported for work after three days, only to be meted with another 10-day suspension[2] — from May 30 to June 10, 2002, for allegedly failing to sign the memorandum suspending him earlier.

After serving the second suspension, respondent reported for work on June 11, 2002 but was informed by Uy that his services had been terminated and that he should draft his resignation letter, drawing respondent to file on June 17, 2002 a complaint[3] for illegal dismissal.

In lieu of a position paper, petitioner submitted a Manifestation[4] contending that the complaint should be dismissed because the Labor Arbiter had no jurisdiction over it since, under their Collective Bargaining Agreement[5] (CBA), such matters must first be brought before the company's grievance machinery.

By Decision[6] of December 29, 2004, the Labor Arbiter, brushing aside petitioner's position, held that respondent was illegally dismissed. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. DECLARING that complainant was illegally dismissed by respondents;

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[1] NLRC records, p. 107.

[2] *Id.* at 109.

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

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

[5] *Id.* at 121-134.

[6] *Id.* at 58-65. Penned by Labor Arbiter Phibun Pura.

> 2. ORDERING respondent to pay complainant the total amount of ₱178,978.48 representing payment for separation pay, back wages and 13th month pay, plus 10% thereof as attorney's fees in the amount of ₱17,897.85, or in the total amount of ONE HUNDRED NINETY SIX THOUSAND EIGHTH HUNDRED SEVENTY SIX PESOS & 33/100 (₱196,876.33) the same to be deposited with the Cashier of this Office, within ten (10) calendar days from receipt of this Decision.

On petitioner's appeal, the National Labor Relations Commission (NLRC), by Resolution[7] of March 30, 2006, set aside the ruling of, and remanded the case to, the Labor Arbiter for disposition based on the company's grievance procedure. It held that based on a letter of the company union president Arturo Ronquillo (Ronquillo), respondent invoked the CBA provision on grievance procedure. Respondent's Motion for Reconsideration was denied by the NLRC by Resolution[8] of June 27, 2006. He thereupon appealed to the Court of Appeals.

By Decision[9] of March 25, 2008, the appellate court *set aside* the NLRC Resolutions and *reinstated* the Labor Arbiter's Decision. It held that the Labor Arbiter had jurisdiction to hear the complaint; that as respondent's dismissal did not proceed from the parties' interpretation of or implementation of the CBA, it is not covered by the grievance machinery procedure; that the laws and rules governing illegal dismissal are not to be found in the parties' CBA but in the labor statutes, hence, the Labor Arbiter had jurisdiction; and that although the option to go through the grievance machinery was stated in Ronquillo's letter[10] to petitioner, respondent denied having made that option as he

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[7] *Id.* at 257-262. Penned by Commissioner Aurelio D. Menzon and concurred in by Commissioner Oscar S. Uy and Presiding Commissioner Gerardo C. Nograles.

[8] CA *rollo*, pp. 102-103. Penned by Commissioner Aurelio D. Menzon and concurred in by Commissioner Oscar S. Uy and Presiding Commissioner Gerardo C. Nograles.

[9] *Id.* at 190-198. Penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Pampio A. Abarintos and Francisco P. Acosta.

[10] NLRC records, p. 111.

had ceased to be a member of the union, as evidenced by a March 20, 2001 Certification[11] of the union's past president Alex Sanio that he had resigned effective March 18, 2001. The appellate court went on to hold that, at that point, it was too late to direct the parties to go through the grievance machinery.

In holding that respondent was illegally dismissed, the appellate court noted that he was not allowed to go back to work after serving two suspensions, without affording him the requisite notice and hearing; and that respondent's failure to seek reinstatement did not negate his claim for illegal dismissal, there being nothing wrong in opting for separation pay in lieu of reinstatement.

Petitioner's motion for reconsideration having been denied by Resolution[12] of January 21, 2009, it interposed the present petition for review on *certiorari*, maintaining that the grievance machinery procedure should have been followed first before respondent's complaint for illegal dismissal could be given due course.

The petition fails.

Articles 217, 261, and 262 of the Labor Code outline the jurisdiction of labor arbiters and voluntary arbitrators as follows:

Art. 217. *Jurisdiction of the Labor Arbiters and the Commission.* - (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;

2. **Termination disputes**;

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[11] *Id.* at 16.

[12] *Rollo*, pp. 36-37. Penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Franchito N. Diamante and Francisco P. Acosta.

3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements. (emphasis and underscoring supplied)

xxx xxx xxx

Art. 261. *Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators.* - **The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies** referred to in the immediately preceding article. Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross violations of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the Voluntary Arbitrator or panel of Voluntary Arbitrators and shall immediately dispose and refer the same to the Grievance Machinery or Voluntary Arbitration provided in the Collective Bargaining Agreement. (emphasis and underscoring supplied)

ART. 262. *Jurisdiction over other labor disputes.* - **The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes** including unfair labor practices and bargaining deadlocks. (emphasis and underscoring supplied)

Under Art. 217, it is clear that a **labor arbiter** has *original* and *exclusive* jurisdiction over termination disputes. On the other hand, under Article 261, a **voluntary arbitrator** has *original* and *exclusive* jurisdiction over grievances arising from the interpretation or enforcement of company policies.

As a general rule then, termination disputes should be brought before a labor arbiter, except when the parties, under Art. 262, unmistakably express that they agree to submit the same to voluntary arbitration.[13]

In the present case, the CBA provision on grievance machinery being invoked by petitioner does not expressly state that termination disputes are included in the ambit of what may be brought before the company's grievance machinery. Thus, the pertinent provision in the parties' CBA reads:

Article IV

GRIEVANCE MACHINERY

Section 1. The parties hereto agree on principle that all disputes between labor and management may be settled through friendly negotiations that the parties have the same interest in the continuity of work until all points in dispute shall have been discussed and settled. x x x **For this purpose, a grievance is defined as any**

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[13] *Vide San Miguel Corporation v. NLRC,* G.R. No. 108001, March 15, 1996, 255 SCRA 133.

disagreement between the UNION and the EMPLOYER or between a worker or group of workers on one hand and the EMPLOYER on the one hand as to the application and interpretation of any of the provisions of this contract. Other matters subject of collective bargaining or regulated by existing labor laws shall not be considered as grievances. (emphasis and underscoring supplied)

Even assuming, however, that the suspension of an employee may be considered as a "disagreement" which bears on the "application and interpretation of any of the provisions" of the CBA, respondent could not have bound himself to bring the matter of his suspension to grievance procedure or voluntary arbitration in light of the documented fact that he had resigned from the union more than a year before his suspension, not to mention the fact that he denied having a hand in the preparation of the union president Ronquillo's letter invoking the grievance procedure. In fine, the labor tribunal had original and exclusive jurisdiction over respondent's complaint for illegal dismissal.

On the merits, as did the appellate court, the Court sustains the Labor Arbiter's ruling that respondent was illegally dismissed absent a showing that he was accorded due process when he was summarily terminated. The Court is not a trier of facts. It is not tasked to review the evidence on record, documentary and testimonial, and reassess the probative weight thereof, especially in view of the well-entrenched rule that findings of fact of administrative officials, such as labor arbiters, who have acquired expertise on account of their specialized jurisdiction are accorded by the courts not only respect but, most often, with finality, particularly when affirmed on appeal.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 188315. August 25, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ISIDRO FLORES *y* LAGUA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; WHEN A WOMAN SAYS SHE WAS RAPED, SHE SAYS IN EFFECT ALL THAT IS NECESSARY TO SHOW THAT RAPE WAS COMMITTED.— In rape cases, "the victim's credibility becomes the single most important issue. For when a woman says she was raped, she says in effect all that is necessary to show that rape was committed; thus, if her testimony meets the test of credibility, the accused may be convicted on the basis thereof."

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF THE COURT OF APPEALS AFFIRMING THOSE OF THE TRIAL COURT ON THE ISSUE OF CREDIBILITY OF WITNESSES MUST BE ACCORDED THE HIGHEST RESPECT AND EVEN FINALITY.— Both the trial court and the appellate court found AAA's testimony credible. The RTC considered it "straightforward and consistent on material points," while the Court of Appeals described it as "spontaneous, forthright, clear and free-from-serious contradictions." Well-entrenched is the legal precept that when the "culpability or innocence of an accused hinges on the issue of the credibility of witnesses, the findings of fact of the Court of Appeals affirming those of the trial court, when duly supported by sufficient and convincing evidence, must be accorded the highest respect, even finality, by this Court and are not to be disturbed on appeal." We see no reason in this case to depart from the principle. Moreover, we give due deference to the trial court's assessment of AAA's credibility, having had the opportunity to witnesses firsthand and note her demeanor, conduct, and attitude under grilling examination.

3. ID.; ID.; ID.; WHEN THE OFFENDED PARTY IS OF TENDER AGE AND IMMATURE, COURTS ARE INCLINED TO GIVE CREDIT TO HER ACCOUNT; REASONS.— Worthy of reiteration is the doctrine that "when the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. When a girl, especially a minor, says that she has been defiled, she says in effect all that is necessary to show that rape was inflicted on her."

4. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; EACH AND EVERY CHARGE OF RAPE IS A SEPARATE AND DISTINCT CRIME AND THAT EACH OF THEM MUST BE PROVEN BEYOND REASONABLE DOUBT; CASE AT BAR.— Out of the 181 counts of rape charged against appellant, the prosecution was only able to prove two counts. Applying the ruling in *People v. Garcia*, the Court of Appeals correctly declared, thus: As to the other counts of rape (Criminal Cases Nos. 03-082 to 03-260) imputed against accused-appellant, We find him not guilty beyond reasonable doubt as the testimony of AAA was merely based on general allegations that she was raped by the accused-appellant on the average of three (3) times a week from February 1999 to 15 October 2002. AAA's bare statement is evidently inadequate and insufficient to prove the other charges of rape as each and every charge of rape is a separate and distinct crime and that each of them must be proven beyond reasonable doubt. On that score alone, the indefinite testimonial evidence that the victim was raped three times a week is decidedly inadequate and grossly insufficient to establish the guilt of accused-appellant therefore with the required quantum of evidence.

5. ID.; ID.; ID.; HOW COMMITTED UNDER ARTICLE 266-A (D) OF THE REVISED PENAL CODE; APPLICATION IN CASE AT BAR.— Under Article 266-A(d) of the Revised Penal Code, rape is committed by a man having carnal knowledge of a woman who is below 12 years of age. At that time of the commission of the first incident of rape, AAA was only 11 years old, as evidenced by her birth certificate.

6. ID.; ID.; ID.; HOW COMMITTED UNDER ARTICLE 266-A (A) OF THE REVISED PENAL CODE; APPLICATION IN

CASE AT BAR.— Since AAA was already 13 years old at the time of the commission of the last incident of rape, the applicable rule is Article 266-A(a) which states that rape is committed by a man having carnal knowledge of a woman through force, threat, or intimidation.

7. ID.; ID.; ID.; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP; MUST BE SPECIFICALLY ALLEGED AND PROVEN TO JUSTIFY THE DEATH PENALTY.— The Court of Appeals appreciated the qualifying circumstances of minority and relationship in imposing the penalty of *reclusion perpetua*. It relied on the established fact that AAA was still a minor when she was raped and on the stipulated fact that appellant is her guardian. One of the instances wherein the crime of rape may be qualified is when the victim is a minor **AND** the accused is her guardian. At this point, we cannot subscribe to this interpretation and hence, we hold that the Court of Appeals erred in considering the qualifying circumstance of relationship. Indeed, it was stipulated during the pre-trial conference that appellant is the guardian of AAA. However, we cannot simply invoke this admission to consider guardianship as a qualifying circumstance in the crime of rape. "Circumstances that qualify a crime and increase its penalty to death cannot be subject of stipulation. The accused cannot be condemned to suffer the extreme penalty of death on the basis of stipulations or admissions. This strict rule is warranted by the gravity and irreversibility of capital punishment. To justify the death penalty, the prosecution must specifically allege in the information and prove during the trial the qualifying circumstances of minority of the victim and her relationship to the offender."

8. ID.; ID.; ID.; QUALIFYING CIRCUMSTANCE OF RELATIONSHIP; TERM "GUARDIAN," CONSTRUED; NOT PROVEN IN CASE AT BAR.— Jurisprudence dictates that the guardian must be a person who has legal relationship with his ward. The theory that a guardian must be legally appointed was first enunciated in the early case of *People v. De la Cruz.* xxx *Garcia* was further applied by analogy in *People v. Delantar* where it was held that the "guardian" envisioned in Section 31(c) of Republic Act No. 7610 is a person who has a legal relationship with a ward. In said case, accused was charged for violation of Section 5, Article III of Republic Act

No. 7610 when he pimped an 11 year old child to at least two clients. The Court held that the prosecution failed to establish filiation *albeit* it considered accused as a *de facto* guardian. However, this was not sufficient to justify the imposition of the higher penalty pursuant to the ruling in *Garcia.* In addition, the Court construed the term "guardian" in this manner: Further, according to the maxim *noscitur a sociis,* the correct construction of a word or phrase susceptible of various meanings may be made clear and specific by considering the company of words in which it is found or with which it is associated. Section 31(c) of R.A. No. 7610 contains a listing of the circumstances of relationship between the perpetrator and the victim which will justify the imposition of the maximum penalty, namely when the perpetrator is an "ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity." It should be noted that the words with which "guardian" is associated in the provision all denote a legal relationship. From this description we may safely deduce that the guardian envisioned by law is a person who has a legal relationship with a ward. This relationship may be established either by being the ward's biological parent (natural guardian) or by adoption (legal guardian). Appellant is neither AAA's biological parent nor is he AAA's adoptive father. Clearly, appellant is not the "guardian" contemplated by law. Be that as it may, this qualifying circumstance of being a guardian was not even mentioned in the Informations. What was clearly stated was that appellant was the "adopting father" of AAA, which the prosecution nonetheless failed to establish.

9. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES ARE AWARDED IN CASE AT BAR.— We likewise reduce the Court of Appeals' award of civil indemnity from ₱75,000.00 to ₱50,000.00 and moral damages from ₱75,000.00 to ₱50,000.00 in line with current jurisprudence. The award of exemplary damages in the amount of ₱25,000.00 should be increased to ₱30,000.00 pursuant to *People v. Guillermo.* While no aggravating circumstance attended the commission of rapes, it was established during trial that appellant used a deadly weapon to perpetrate the crime. Hence, the award of exemplary damages 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.*:

On appeal is the 29 January 2009 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00726 finding appellant Isidro Flores *y* Lagua guilty beyond reasonable doubt of two (2) counts of rape.

In 181 Informations, which are similarly worded except for the dates of the commission of the crime and the age of the complainant, filed before the Regional Trial Court (RTC) of Makati City, Branch 140, docketed as Criminal Cases Nos. 03-081 to 03-261, appellant was accused of raping AAA,[2] allegedly committed as follows:

> That in or about and sometime during the month of _____, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, being the adopting father of complainant who was then _____ years of age, did then and there willfully, unlawfully and feloniously had carnal knowledge with [AAA] by means of force and intimidation and against the will of the complainant.[3]

Upon arraignment, appellant pleaded not guilty. During the pre-trial conference, the parties stipulated on the following facts:

1. AAA is below fifteen (15) years of age;

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[1] Penned by Associate Justice Pampio A. Abarintos with Associate Justices Mario L. Guariña III and Sesinando E. Villon, concurring. *Rollo*, pp. 2-24.

[2] The victim's real name is withheld to protect her privacy, pursuant to Republic Act No. 9262 or the *Anti-Violence Against Women and Their Children Act of 2000* and *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426.

[3] Records, pp. 1-341.

2. Appellant is the guardian of AAA; and

3. AAA has been under the care and custody of appellant and his wife since AAA was one and a half years old.[4]

Thereafter, trial on the merits ensued.

The following facts are undisputed:

AAA lived with her adoptive mother, BBB,[5] since she was just a few months old.[6] BBB is married to appellant, who was working abroad for six (6) years. Appellant came home in 1997 and lived with AAA and BBB. BBB was working as a restaurant supervisor from 4:00 p.m. to 2:00 a.m. for six (6) days a week.

Five (5) witnesses testified for the prosecution. They are the victim herself, Marvin Suello (Marvin), PO1 Evangeline Babor (PO1 Babor), P/Sr Insp. Paul Ed Ortiz (P/Sr Insp. Ortiz), and Maximo Duran (Duran).

The prosecution's version of the facts follows—

In February 1999 at around 9:30 p.m., AAA, then 11 years old, was sleeping inside the house when she felt and saw appellant touch her thighs. AAA could see appellant's face as there was a light coming from the altar. AAA was naturally surprised and she asked appellant why the latter did such a thing. Appellant did not answer but told her not to mention the incident to anybody. AAA then saw appellant went back to his bed and touch his private part. AAA immediately went back to sleep.

The following day, at around the same time, and while BBB was at work, appellant again touched AAA from her legs up to her breast. AAA tried to resist but appellant threatened that he will kill her and BBB.

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[4] *Id.* at 362.

[5] Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed per *Cabalquinto*.

[6] TSN, 2 April 2003, p. 5.

Two (2) weeks after the incident, AAA was already asleep when she suddenly woke up and saw appellant holding a knife. While pointing the knife at AAA's neck, appellant removed his shorts, as well as AAA's pajamas. He slowly parted AAA's legs and inserted his penis into AAA's vagina. Meanwhile, AAA struggled and hit appellant's shoulders. Appellant was able to penetrate her twice before he got out of the house. Two (2) days after, appellant again raped her by inserting his organ into AAA's vagina. AAA recounted that appellant raped her at least three (3) times a week at around the same time until 15 October 2002, when she was 14 years old. After the last rape incident, AAA did not go home after school and instead went to the house of her friend, Marvin.[7]

On 16 October 2002, Marvin watched television with AAA from 5:00 p.m. to 8:00 p.m. Afterwards, AAA refused to go home. She told Marvin that appellant would spank her for going home late. Marvin asked AAA if there were other things that appellant might have done to her, aside from spanking. At that point, AAA finally cried and divulged that she has been raped by appellant. Marvin told AAA to file a complaint.[8]

AAA stayed at her mother's friend's house and came back on 18 October 2002. She, together with Marvin, went to *Kagawad* Ramon Espena to seek assistance. Marvin went with the *Barangay Tanod* in apprehending appellant, who at that time, was trying to escape.[9]

PO1 Babor was the duty investigator at the Women's and Children Desk of Makati Police Station on 18 October 2002. She took down the statements of AAA and her friend, Marvin. She then referred AAA to the PNP Crime Laboratory to undergo medico-legal examination.[10]

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[7] TSN, 24 April 2003, pp. 2-11.

[8] TSN, 26 February 2003, pp. 6-7.

[9] *Id.* at 5-8.

[10] TSN, 4 June 2003, pp. 4-6.

P/Sr. Insp. Ortiz confirmed that she conducted the medico-legal examination on AAA. Results of the examination, as indicated in the medico-legal report, show that the "hymen is with presence of deep healed laceration at 1 o'clock and shallow healed laceration at 2 o'clock positions at the time of examination." Said report concluded that AAA is in a "non-virgin state physically."[11] P/Sr. Insp. Ortiz opined that the lacerations could have been caused by any solid object, like the penis inserted at the *genitalia*.[12]

Duran and another *Bantay Bayan* member were at the *barangay* outpost at 2:10 p.m. on 18 October 2002 when they were summoned by *Barangay Kagawad* Ramon Espena. Acting on the complaint of AAA, they were directed to proceed to the house of appellant to invite him for questioning. Duran saw appellant about to board a jeep. They stopped the jeep and asked appellant to alight therefrom and invited him to the *Bantay Bayan* outpost. Appellant voluntarily went with them. Appellant was then brought to the police station.[13]

Only appellant testified in his defense. While appellant admitted that he was a strict father to AAA in that he would scold and spank her whenever the latter would ran away, he denied raping AAA.[14] He alleged that AAA has the propensity to make up stories and was even once caught stealing money from her grandmother. Appellant recalled that on 16 October 2002, AAA asked permission to go out to buy a "project." She never came home.[15]

On 27 August 2004, the RTC rendered judgment finding appellant guilty beyond reasonable doubt of 181 counts of rape. The dispositive portion of the Decision reads:

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[11] Records, p. 350.

[12] TSN, 4 June 2003, p. 24.

[13] TSN, 5 June 2003, pp. 5-7.

[14] TSN, 3 July 2003, pp. 7-8.

[15] TSN, 17 July 2003, pp. 3-14.

WHEREFORE, premises considered, judgment is hereby rendered in Criminal Cases Nos. 03-081 to 03-261, finding accused ISIDRO FLORES *y* LAGUA, **GUILTY BEYOND REASONABLE DOUBT** of ONE HUNDRED AND EIGHTY-ONE (181) counts of RAPE penalized by RA 8353, Chapter 3, Article 266-A, par. 1(a) in relation to Article 266-B par. 1. Taking into account the minority of [AAA], adopted daughter of the accused, at the time of rape, and the fact the offender is the adoptive father of the minor complainant, accused, is hereby sentenced to suffer the penalty of **DEATH for each count of rape**, and to pay [AAA] the amount of ONE HUNDRED FIFTY THOUSAND PESOS (PHP 150,000.00) for moral damages and FIFTY THOUSAND PESOS (PHP 50,000.00) for exemplary damages for each count of rape.[16]

The trial court found that force and intimidation attended the commission of the crime of rape through the testimony of the victim, which the trial court deemed "straightforward, consistent and credible." The trial court also established that appellant is the adoptive father of AAA since 1989 and that AAA was then a minor, as proven by the birth certificate, testimonies of witnesses, and admission made by AAA.[17] Finally, the trial court dismissed appellant's defense of denial as self-serving and which cannot prevail over AAA's positive testimony.[18]

Upon denial of appellant's motion for reconsideration, the case was initially elevated to the Court of Appeals for its review pursuant to *People v. Mateo*.[19] However, the Court of Appeals dismissed the case in 23 August 2005 for failure of appellant to file his appellant's brief.[20] When the case was brought before us on automatic review, we set aside the Resolution of the Court of Appeals and remanded it back for appropriate action and disposition on the ground that review by the Court of Appeals

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

[17] *Id.* at 25.

[18] *Id.* at 26.

[19] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[20] CA *rollo*, p. 31.

of the trial court's judgment imposing the death penalty is automatic and mandatory.[21]

On 29 January 2009, the Court of Appeals affirmed the finding that AAA was raped by appellant, but it did so only on two (2) counts.

The *fallo* of the Decision reads:

> IN LIGHT OF ALL THE FOREGOING, the decision is hereby rendered as follows:
>
> 1. Accused-appellant Isidro Flores *y* Lagua in Criminal Cases Nos. 03-082 to 03-260, inclusive, is found not guilty on the ground of reasonable doubt and is hereby acquitted;
>
> 2. Accused-appellant Isidro Flores *y* Lagua in Criminal Cases Nos. 03-081 and 03-261 is hereby found guilty beyond reasonable doubt of two (2) counts of rape and is sentenced to suffer the penalty of *reclusion perpetua* for each count without eligibility for parole and to pay the victim AAA (to be identified through the Information in this case), the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages for each count.[22]

The appellate court found that the guilt of appellant on the first and last incidents of rape in Criminal Cases Nos. 03-081 and 03-261, respectively, was proven by the prosecution beyond reasonable doubt.[23] With respect to the other incidents, according to the appellate court, the testimony of AAA was merely based on general allegations that she was raped on the average of three (3) times a week from February 1999 to 15 October 2002. Therefore, the appellate court concluded that her statement is inadequate and insufficient to prove the other charges of rape.[24]

On 17 February 2009, appellant filed a Notice of Appeal of the Court of Appeals' Decision. In a Resolution dated 26 October

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[21] *Id.* at 40.

[22] *Rollo*, p. 23.

[23] *Id.* at 18.

[24] *Id.* at 21.

2009, this Court required the parties to simultaneously submit their respective Supplemental Briefs. Appellant and the Office of the Solicitor General (OSG) both filed their Manifestations stating that they will no longer file any Supplemental Briefs, but instead, they will merely adopt their Appellant's and Appellee's Briefs, respectively.[25]

Appellant harps on the failure of AAA to actively defend herself or resist the alleged assaults. Moreover, considering that the relatives of AAA live only meters away from her and the frequency of the alleged molestation, appellant proffers that it was impossible for them not to notice the abuses. Appellant also questions the appreciation of the circumstances of minority and relationship as basis for the imposition of the death penalty. He contends that an adopting parent is not included within the purview of qualifying relationships under Article 266-B of the Revised Penal Code. Assuming *arguendo* that an adopting parent may be construed as similar to a parent, appellant argues that the term "adopting parent" must be given a definite and technical meaning in that the process of adoption must first be undertaken and a judicial decree to that matter must have been issued.[26]

The OSG, on the other hand, avers that the positive and categorical testimony of AAA that appellant sexually abused her, in tandem with the medico-legal report, are more than sufficient to establish appellant's guilt beyond reasonable doubt. Moreover, appellant failed to impute any ill motive on the part of AAA to falsely accuse him of rape.[27]

The OSG insists that AAA's failure to report promptly the previous incidents of rape does not dent her credibility. Appellant's exercise of moral ascendancy over AAA and that fact that she was under physical threat during those times, could have instilled fear on AAA from reporting said incidents.[28]

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[25] *Id.* at 36-37 and 39-40.

[26] CA *rollo*, pp. 80-85.

[27] *Id.* at 125-128.

[28] *Id.* at 128-129.

The OSG moved for modification of the penalty from death to *reclusion perpetua* without eligibility for parole in light of Republic Act No. 9346.[29]

After an extensive review of the records, we find no cogent reason to overturn the decision of the Court of Appeals.

Appellant was charged with 181 counts of rape, all of which were committed within the span of three (3) years or from February 1999 until 15 October 2002. We are in full accord with the acquittal of appellant in the 179 counts of rape. Stated otherwise, we agree with appellant's conviction for two (2) counts of rape.

In rape cases, "the victim's credibility becomes the single most important issue. For when a woman says she was raped, she says in effect all that is necessary to show that rape was committed; thus, if her testimony meets the test of credibility, the accused may be convicted on the basis thereof."[30]

Both the trial court and the appellate court found AAA's testimony credible. The RTC considered it "straightforward and consistent on material points," while the Court of Appeals described it as "spontaneous, forthright, clear and free-from-serious contradictions." Well-entrenched is the legal precept that when the "culpability or innocence of an accused hinges on the issue of the credibility of witnesses, the findings of fact of the Court of Appeals affirming those of the trial court, when duly supported by sufficient and convincing evidence, must be accorded the highest respect, even finality, by this Court and are not to be disturbed on appeal."[31] We see no reason in this case to depart from the principle. Moreover, we give due deference

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[29] *Id.* at 133-134.

[30] *People v. Paculba,* G.R. No. 183453, 9 March 2010 citing *People v. Mingming*, G.R. No. 174195, 10 December 2008, 573 SCRA 509, 532; *People v. Capareda,* 473 Phil. 301, 330 (2004); *People v. Galido*, G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 516.

[31] *People v. Guillera,* G.R. No. 175829, 20 March 2009, 582 SCRA 160, 168 citing *Siccuan v. People*, G.R. No. 133709, 28 April 2005, 457 SCRA 458, 463-464.

to the trial court's assessment of AAA's credibility, having had the opportunity to witnesses firsthand and note her demeanor, conduct, and attitude under grilling examination.[32]

Worthy of reiteration is the doctrine that "when the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. When a girl, especially a minor, says that she has been defiled, she says in effect all that is necessary to show that rape was inflicted on her."[33]

Out of the 181 counts of rape charged against appellant, the prosecution was only able to prove two counts. Applying the ruling in *People v. Garcia,*[34] the Court of Appeals correctly declared, thus:

> As to the other counts of rape (Criminal Cases Nos. 03-082 to 03-260) imputed against accused-appellant, We find him not guilty beyond reasonable doubt as the testimony of AAA was merely based on general allegations that she was raped by the accused-appellant on the average of three (3) times a week from February 1999 to 15 October 2002. AAA's bare statement is evidently inadequate and insufficient to prove the other charges of rape as each and every charge of rape is a separate and distinct crime and that each of them must be proven beyond reasonable doubt. On that score alone, the indefinite testimonial evidence that the victim was raped three times a week is decidedly inadequate and grossly insufficient to establish the guilt of accused-appellant therefore with the required quantum of evidence.[35]

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[32] *People v. Malate*, G.R. No. 185724, 5 June 2009, 588 SCRA 816, 825 citing *People v. Bantiling*, 420 Phil. 849, 862-863 (2001).

[33] *People v. Cadap*, G.R. No. 190633, 5 July 2010 citing *Llave v. People*, G.R. No. 166040, 26 April 2006, 488 SCRA 376, 400; *People v. Corpuz*, G.R. No. 168101, 13 February 2006, 482 SCRA 435, 448; *People v. Bidoc*, G.R. No. 169430, 21 October 2006, 506 SCRA 481, 495.

[34] 346 Phil. 475 (1997).

[35] *Rollo*, p. 21.

As regards to the first incident of rape in 1999, AAA recounted how appellant forced her to have sexual intercourse with him, thus:

Q: What happened after two (2) weeks?

A: I was sleeping when somebody went on top of my head.

Q: Tell us about what time was this when this happened, when you said you noticed somebody climbing up your bed?

A: 9:30 in the evening.

Q: At that time again, where was your [BBB]?

A: At work, sir.

Q: What happened after you noticed somebody climbing up your bed?

A: I woke up and I saw him holding a bread knife.

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Q: Did you know who was this person who climbed your bed and who was holding a knife?

A: Yes, sir.

Q: Who was that person?

A: "Papa"

Q: When you said "Papa," you are referring to the accused?

A: Yes, sir.

Q: What happened next?

A: "*Tinusok nya yong kutsilyo sa leeg ko*" and he removed his shorts.

Q: At that time, what were you then wearing?

A: Pajama, sir.

Q: What if any did the accused do to what you were wearing then?

A: He undressed me.

Q: Which one did he remove?

A: My pajama.

Q: What about your upper garments?

A: He did not remove.

Q: After you said the accused remove his shorts and removed your pajama, what happened?

A: He slowly parted my legs.

Q: And then?

A: He inserted his penis into my vagina.

Q: What were you doing, were you resisting when he was doing that?

A: I was resisting but my strength is no match to him. He was strong.

Q: What sort of resistance were you putting up that time?

A: "*Hinampas ko po siya sa braso.*"

Q: What was his response to your act of hitting his arms?

A: "*Wag daw po akong papalag at bubutasin nya ang leeg ko*."[36]

Under Article 266-A(d) of the Revised Penal Code, rape is committed by a man having carnal knowledge of a woman who is below 12 years of age. At that time of the commission of the first incident of rape, AAA was only 11 years old, as evidenced by her birth certificate.[37]

As regards the final incident of rape in 15 October 2002, AAA narrated:

Q: You said this happened always, approximately three (3) times a week, until when?

A: The last time was in October 15, 2002.

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[36] TSN, 24 April 2003, pp. 5-8.

[37] Records, p. 351.

Q: This last incident, describe to us where did it happen again?

A: In our house.

Q: At about what time?

A: 9:30 in the evening.

Q: Narrate to us how did this incident happen?

A: The same. He went to my bed, holding a bread knife, pointing it to me and he removed my shorts and he also undressed himself.

Q: Then?

A: And he inserted his sexual organ into my vagina and after the incident, he left the house.[38]

Since AAA was already 13 years old at the time of the commission of the last incident of rape, the applicable rule is Article 266-A(a) which states that rape is committed by a man having carnal knowledge of a woman through force, threat, or intimidation.

AAA's testimony that she was defiled by appellant was corroborated by the medical findings of the medico-legal expert. The presence of deep healed and shallow healed laceration only confirms AAA's claim of rape.

In both rape incidents, the trial court applied Article 266-B of the Revised Penal Code in imposing the penalty of death, which was later modified by the Court of Appeals to *reclusion perpetua* pursuant to Republic Act No. 9346. Article 266-B provides:

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

"l) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

[38] *Id.* at 11.

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The Court of Appeals appreciated the qualifying circumstances of minority and relationship in imposing the penalty of *reclusion perpetua*. It relied on the established fact that AAA was still a minor when she was raped and on the stipulated fact that appellant is her guardian. One of the instances wherein the crime of rape may be qualified is when the victim is a minor **AND** the accused is her guardian. At this point, we cannot subscribe to this interpretation and hence, we hold that the Court of Appeals erred in considering the qualifying circumstance of relationship.

Indeed, it was stipulated during the pre-trial conference that appellant is the guardian of AAA. However, we cannot simply invoke this admission to consider guardianship as a qualifying circumstance in the crime of rape. "Circumstances that qualify a crime and increase its penalty to death cannot be subject of stipulation. The accused cannot be condemned to suffer the extreme penalty of death on the basis of stipulations or admissions. This strict rule is warranted by the gravity and irreversibility of capital punishment. To justify the death penalty, the prosecution must specifically allege in the information and prove during the trial the qualifying circumstances of minority of the victim and her relationship to the offender."[39]

Jurisprudence dictates that the guardian must be a person who has legal relationship with his ward. The theory that a guardian must be legally appointed was first enunciated in the early case of *People v. De la Cruz*.[40] The issue in said case was whether the aunt of a rape victim could file a criminal complaint on behalf of her niece, when the victim's father was still living and residing in the Philippines. The Solicitor-General contended that the aunt was the legal guardian of the victim, thus, was competent to sign the information. The Court rejected this contention and ruled as follow:

Article 344 of the Revised Penal Code, paragraph 3, is as follows:

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[39] *People v. Dalipe*, G.R. No. 187154, 23 April 2010 citing *People v. Ibarrientos*, G.R. Nos. 148063-64, 17 June 2004, 432 SCRA 424, 440.

[40] 59 Phil. 531 (1934).

"*Tampoco puede procederse por causa de estupro, rapto, violacion o abusos deshonestos, sino en virtud de denuncia de la parte agraviada, o de sus padres, o abuelos o tutor, ni despues de haberse otorgado al ofensor, perdon expreso por dichas partes, segun los casos.*" Without passing at this time on the question whether the tutor (legal guardian) may file a complaint in the temporary absence of the parents or grandparents of the offended party, it suffices to say that we cannot accept the view of the Government that an aunt who has the temporary custody of a minor in the absence of her father occupies the position of a tutor (legal guardian). The word "tutor" (guardian) appearing in article 344, *supra*, must be given the same meaning as in section 551 of the Code of Civil Procedure, that is to say, a guardian legally appointed in accordance with the provisions of Chapter XXVII of the Code of Civil Procedure.[41]

Garcia was more direct in addressing the issue of when the accused will be considered a "guardian" as a qualifying circumstance in the crime of rape. In said case, appellant therein raped a 12-year-old girl. The victim was left to the care of appellant, who is the live-in partner of the victim's aunt. The issue of whether appellant is considered a guardian in the contemplation of the amendment to the law on rape such that, the victim being a minor, he should be punished with the higher penalty of death for the nine (9) crimes of rape was answered in the negative by the Court. The underlying reason behind its ruling was explained in this discourse:

In the law on rape, the role of a guardian is provided for in Article 344 of the Revised Penal Code, specifically as one who, aside from the offended party, her parents or grandparents, is authorized to file the sworn written complaint to commence the prosecution for that crime. In *People vs. De la Cruz*, it was held that the guardian referred to in the law is either a legal or judicial guardian as understood in the rules on civil procedure.

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It would not be logical to say that the word "guardian" in the third paragraph of Article 344 which is mentioned together with parents and grandparents of the offended party would have a concept different from the "guardian" in the recent amendments of Article 335 where

[41] *Id.* at 532.

he is also mentioned in the company of parents and ascendants of the victim. In Article 344, the inclusion of the guardian is only to invest him with the power to sign a sworn written complaint to initiate the prosecution of four crimes against chastity, while his inclusion in the enumeration of the offenders in Article 335 is to authorize the imposition of the death penalty on him. With much more reason, therefore, should the restrictive concept announced in *De la Cruz*, that is, that he be a legal or judicial guardian, be required in the latter article.

The Court notes from the transcripts of the proceedings in Congress on this particular point that the formulators were not definitive on the concept of "guardian" as it now appears in the attendant circumstances added to the original provisions of Article 335 of the Code. They took note of the status of a guardian as contemplated in the law on rape but, apparently on pragmatic considerations to be determined by the courts on an *ad hoc* basis, they agreed to just state "guardian" without the qualification that he should be a legal or judicial guardian. It was assumed, however, that he should at the very least be a *de facto* guardian. Indeed, they must have been aware of jurisprudence that the guardian envisaged in Article 335 of the Code, even after its amendment by Republic Act No. 4111, would either be a natural guardian, sometimes referred to as a legal or statutory guardian, or a judicial guardian appointed by the court over the person of the ward.

They did agree, however, that the additional attendant circumstances introduced by Republic Act No. 7659 should be considered as special qualifying circumstances specifically applicable to the crime of rape and, accordingly, cannot be offset by mitigating circumstances. The obvious ratiocination is that, just like the effect of the attendant circumstances therefore added by Republic Act No. 4111, although the crime is still denominated as rape such circumstances have changed the nature of simple rape by producing a qualified form thereof punishable by the higher penalty of death.

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The law requires a legal or judicial guardian since it is the consanguineous relation or the solemnity of judicial appointment which impresses upon the guardian the lofty purpose of his office and normally deters him from violating its objectives. Such considerations do not obtain in appellant's case or, for that matter, any person similarly circumstanced as a mere custodian of a ward

or another's property. The fiduciary powers granted to a real guardian warrant the exacting sanctions should he betray the trust.

In results, therefore, that appellant cannot be considered as the guardian falling within the ambit of the amendatory provision introduced by Republic Act No. 7659. He would not fall either in the category of the "common-law spouse of the parent of the victim" in the same enumeration, since his liaison is with respect to the aunt of [AAA]. Since both logic and fact conjointly demonstrate that he is actually only a custodian, that is, a mere caretaker of the children over whom he exercises a limited degree of authority for a temporary period, we cannot impose the death penalty contemplated for a real guardian under the amendments introduced by Republic Act No. 7659, since he does not fit into that category.[42]

People v. De la Cuesta[43] adhered to *Garcia* when it ruled that the mere fact that the mother asked the accused to look after her child while she was away did not constitute the relationship of guardian-ward as contemplated by law.[44]

Garcia was further applied by analogy in *People v. Delantar*[45] where it was held that the "guardian" envisioned in Section 31(c) of Republic Act No. 7610 is a person who has a legal relationship with a ward. In said case, accused was charged for violation of Section 5, Article III of Republic Act No. 7610 when he pimped an 11 year old child to at least two clients. The Court held that the prosecution failed to establish filiation *albeit* it considered accused as a *de facto* guardian. However, this was not sufficient to justify the imposition of the higher penalty pursuant to the ruling in *Garcia*. In addition, the Court construed the term "guardian" in this manner:

Further, according to the maxim *noscitur a sociis,* the correct construction of a word or phrase susceptible of various meanings may be made clear and specific by considering the company of words in which it is found or with which it is associated. Section 31(c) of

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[42] *People v. Garcia, supra* note 34 at 500-503.

[43] 363 Phil. 425 (1999).

[44] *Id.* at 433.

[45] G.R. No. 169143, 2 February 2007, 514 SCRA 115.

R.A. No. 7610 contains a listing of the circumstances of relationship between the perpetrator and the victim which will justify the imposition of the maximum penalty, namely when the perpetrator is an "ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity." It should be noted that the words with which "guardian" is associated in the provision all denote a legal relationship. From this description we may safely deduce that the guardian envisioned by law is a person who has a legal relationship with a ward. This relationship may be established either by being the ward's biological parent (natural guardian) or by adoption (legal guardian). Appellant is neither AAA's biological parent nor is he AAA's adoptive father. Clearly, appellant is not the "guardian" contemplated by law.[46]

Be that as it may, this qualifying circumstance of being a guardian was not even mentioned in the Informations. What was clearly stated was that appellant was the "adopting father" of AAA, which the prosecution nonetheless failed to establish.

For failure of the prosecution to prove the qualifying circumstance of relationship, appellant could only be convicted for two (2) counts of simple rape, and not qualified rape.

We likewise reduce the Court of Appeals' award of civil indemnity from ₱75,000.00 to ₱50,000.00 and moral damages from ₱75,000.00 to ₱50,000.00 in line with current jurisprudence.[47] The award of exemplary damages in the amount of ₱25,000.00 should be increased to ₱30,000.00 pursuant to *People v. Guillermo*.[48] While no aggravating circumstance attended the commission of rapes, it was established during trial that appellant used a deadly weapon to perpetrate the crime. Hence, the award of exemplary damages is proper.

WHEREFORE, the decision dated 29 January 2009 convicting Isidro Flores *y* Lagua of the crime of rape in Criminal Cases

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[46] *Id.* at 139-140.

[47] *People v. Ofemiano*, G.R. No. 187155, 1 February 2010; *People v. Pabol*, G.R. No. 187084, 12 October 2009, 603 SCRA 522, 532; *People v. Gragasin*, G.R. No. 186496, 25 August 2009, 597 SCRA 214, 233; *People v. Arcosiba*, G.R. No. 181081, 4 September 2009, 598 SCRA 517, 536.

[48] G.R. No. 177138, 26 January 2010.

Nos. 03-081 and 03-261 is hereby *AFFIRMED with the MODIFICATION* in that he is held guilty beyond reasonable doubt of two counts of simple rape only and sentenced to suffer the penalty of *reclusion perpetua* for each count. He is also ordered, for each count of rape, to pay the victim civil indemnity in the amount of ₱50,000.00, moral damages in the amount of ₱50,000.00, and exemplary damages in the amount of ₱30,000.00.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 188328. August 25, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOSELITO NASARA *y* DAHAY,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CHAIN OF CUSTODY RULE; NOT COMPLIED WITH IN CASE AT BAR.— The issue, in the event of non-compliance with above-quoted provision of R.A. No. 9165, does not pertain to admissibility of evidence, but to weight-evidentiary merit or probative value thereof. *People v. Dela Cruz* enlightens: As a method of authenticating evidence, the **chain of custody** rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered

in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. In the present case, the records do not show that the procedural requirements of Section 21 with respect to the custody and disposition of confiscated drugs were followed. No physical inventory and photographs were taken. On that score alone, the case for the prosecution fails, absent a plausible explanation to justify failure to comply with the requirements.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); IMPLEMENTING RULES AND REGULATIONS; SECTION 86 (A) THEREOF, VIOLATED IN CASE AT BAR.— Parenthetically, there is even no showing that coordination with PDEA prior to and after the conduct of the buy-bust operation was made, in violation of Section 86 (a), Implementing Rules and Regulations to R.A. 9165.

3. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; OVERCOME IN CASE AT BAR.— The chain of custody was, however, broken after SPO2 Dionco failed to mark the first sachet which is the subject of the sale and the subject of the Information. Why said sachet, together with the two others, was delivered to the PNP Crime Laboratory after more than eight hours from initial custody of the apprehending officers was not even explained. The police officers-members of the buy-bust team cannot bank on the presumption of regularity in the performance of their duties. The presumption has been destroyed upon their unjustified failure to conform to the procedural requirements mentioned above.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

Joselito "Jojo" Nasara (appellant) was convicted by the Regional Trial Court (RTC) of Quezon City, Branch 103 for violation of Section 5, Article II, of Republic Act No. 9165, (R.A. No. 9165) or the Dangerous Drugs Act of 2002.

The accusatory portion of the Information against appellant, together with "another person," reads:

> That on or about the 16th day of March 2004 in Quezon City, Philippines, the said accused conspiring and confederating with another person whose thru (sic) name, identity and whereabouts has not as yet ascertained and mutually helping each other not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, wilfully (sic), and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero three (0.03) grams of white crystalline substance containing methylamphetamine hydrochloride, a dangerous drug.
>
> CONTRARY TO LAW.[1] (underscoring supplied)

From the evidence for the prosecution, the following version is culled:

In the morning of March 16, 2004, a confidential informant reported at Police Station 6, Batasan Hills, Quezon City the selling of illegal drugs along San Miguel Street, Payatas, Quezon City.

On the instruction of P/Supt. Raymond Esquivel, SPO2 Rodelio Dionco, PO2 Rolando Lopez (PO2 Lopez), SPO4 Constancio Pitaga and SPO4 Reynaldo Angeles conducted a buy-bust operation in the area. SPO2 Dionco, who was designated as poseur-buyer, was given two 100 peso bills and instructed to scratch his head to signal the consummation of the sale.

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[1] Records, p. 1.

Upon arriving at San Miguel Street at 10:30 A.M., also on March 16, 2004, SPO2 Dionco and the informant approached appellant who was standing, together with a certain *Kune,* outside a small store. The informant thereupon introduced to *Kune* and appellant SPO2 Dionco as a prospective buyer. As appellant asked how much was being bought, SPO2 Dionco handed the two bills to appellant who, together with *Kune*, went inside a house adjacent to the store. When the two returned, *Kune* handed a small plastic sachet containing white crystalline substances to SPO2 Dionco who, after examining it, scratched his head.

As the back-up police officers were closing in, SPO2 Dionco introduced himself as a police officer to appellant and *Kune* who shoved him and both ran away. The rest of the team gave a chase and caught appellant but not *Kune*.

The police officers recovered the money from the right pocket of appellant's short pants. On inspection of the house, SPO2 Dionco found on top of a television set two plastic sachets containing substances similar to those inside the sachet handed to him by *Kune*. These two sachets were marked by PO2 Lopez with his initials "RL".[2]

The buy-bust team thereafter brought appellant to the police station, together with the seized items which were turned over to the Desk Officer. A memorandum[3] was then prepared by P/Insp. Abelardo Aquino, addressed to the Chief of the Central Police District, Physical Science Division, requesting for the conduct of laboratory examination on the seized items to determine the presence of dangerous drugs and their weight, which memorandum was delivered by PO2 Lopez and received at 7:00 p.m. of March 16, 2004 by "Nard" Jabonillo.

Upon receipt of the sachets, Engr. Leonard Jabonillo, Forensic Analyst of the Central Police District Crime Laboratory Office, conducted a laboratory examination thereof and recorded his

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[2] TSN, June 22, 2004, p. 19. – PO2 Lopez testified that the initials "RL" were marked on the sachets However, in the Chemistry Report, the initials were indicated as "RD".

[3] Exh. "D", records, p. 6.

findings in Chemistry Report No. D-292-2004 that each of the three heat-sealed plastic sachets contained 0.03 grams and was positive for methylamphetamine hydrochloride.[4]

Appellant, denying the accusation, claimed that he was framed-up. His version goes: On March 16, 2004, while he was resting inside the house of one Nelson Balawis in San Miguel, he heard some *kalabugan* which prompted him to go outside where he saw three armed men, one of whom pointed a gun at him. When he asked why, the man shouted to his companions "*Damputin yan*!," and he was in fact apprehended and brought to a waiting vehicle.

Inside the vehicle were two men who were also accosted and who informed him that the police officers acquired from them 2.5 grams of *shabu*, ₱11,000.00 in cash, and a cellular phone.

Finding for the prosecution, the trial court convicted appellant, disposing as follows:[5]

> ACCORDINGLY, judgment is hereby rendered finding the accused **JOSELITO "JOJO" MASARA** *(sic)* ***Y*** **DAHAY, GUILTY** beyond reasonable doubt of violating Section 5 of RA 9165 (for drug pushing) as charged and he is hereby sentenced to a jail term of **LIFE IMPRISONMENT** and to pay a fine of ₱500,000.00.
>
> The *shabu* involved in this case in three (3) small plastic sachets of 0.03 gram each are ordered transmitted to PDEA thru DDB for proper care and disposition as per RA 9165.
>
> SO ORDERED.[6] (emphasis in the original)

Ruling out appellant's defense of frame-up, the trial court observed, quoted *verbatim*:

> Jojo testified that he saw two arrested persons inside the FX van where he was also boarded and who told him that the police got

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[4] Records, p. 7

[5] *Id.* at 98-102.

[6] *Id.* at 102.

from them 2.5 grams of *shabu*, ₱11,000.00 cash and a cellphone. If this were so, then those policemen already have (*sic*) enough sequestered merchandise to bother going after Jojo who, based on his claim, had just gotten out of his room, jobless as a construction crewman for three months, penniless, and who must have clearly appeared to those three (3) armed men mentioned by the defense as a person, from whom they could get nothing. So why bother with him if after all Jojo was not the subject of their going to that place. x x x[7] (underscoring supplied)

As stated earlier, the Court of Appeals affirmed appellant's conviction, hence, the present petition.

In the main, appellant claims that there was failure to follow the requirements of Sec. 21 of R.A. No. 9165, hence, it compromised the integrity and evidentiary value of the allegedly seized items.

It bears noting that the Information is for selling "0.03 gram" of *shabu*, and that the two heat-sealed plastic sachets each also containing the same 0.03 gram of *shabu* allegedly confiscated from the house were presented to corroborate the prosecution's evidence.

Sec. 21 of R.A. No 9165 provides:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources or dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs **shall**, **immediately after seizure and confiscation**, **physically inventory and photograph the same** *in the presence of* the accused or the persons/s from whom such items were confiscated and/or seized, or his/

[7] *Id.* at 101.

> her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official **who shall be required to sign the copies of the inventory and be given a copy thereof**; x x x (emphasis and underscoring supplied)

The issue, in the event of non-compliance with above-quoted provision of R.A. No. 9165, does not pertain to admissibility of evidence, but to weight-evidentiary merit or probative value thereof.[8]

People v. Dela Cruz[9] enlightens:

> As a method of authenticating evidence, the **chain of custody** rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. (emphasis and underscoring supplied)

In the present case, the records do not show that the procedural requirements of Section 21 with respect to the custody and disposition of confiscated drugs were followed. No physical inventory and photographs were taken. On that score alone, the case for the prosecution fails, absent a plausible explanation to justify failure to comply with the requirements.

Parenthetically, there is even no showing that coordination with PDEA prior to and after the conduct of the buy-bust

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[8] *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627.

[9] G.R. No. 181545, October 8, 2008, 568 SCRA 273, citing *Lopez v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619.

operation was made, in violation of Section 86 (a), Implementing Rules and Regulations to R.A. 9165.[10]

Given the purpose of conducting a laboratory examination of the suspicious items seized — to determine if indeed they contain, in this case, *shabu*, a more strict standard is imposed by law to ascertain that they are the same items seized or are not substituted or adulterated. Said standard has not been observed in the present case.

The chain of custody was, however, broken after SPO2 Dionco failed to mark the first sachet which is the subject of the sale and the subject of the Information. Why said sachet, together with the two others, was delivered to the PNP Crime Laboratory after more than eight hours from initial custody of the apprehending officers was not even explained.

The police officers-members of the buy-bust team cannot bank on the presumption of regularity in the performance of their duties. The presumption has been destroyed upon their unjustified failure to conform to the procedural requirements mentioned above.[11]

The prosecution having failed to discharge its onus of proving the guilt beyond reasonable doubt of appellant, his exoneration is in order.

WHEREFORE, the appeal is *GRANTED*. The assailed decision of the appellate court is *REVERSED and SET ASIDE*. Appellant,

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[10] IMPLEMENTING RULES AND REGULATIONS to R.A. 9165 - Section 86 (a) Relationship/Coordination between PDEA and Other Agencies. – The PDEA shall be the lead agency in the enforcement of the Act while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of PDEA: *Provided*, that the said agencies shall, as far as practicable, coordinate with the PDEA prior to anti-drug operations; *Provided, further*, that, in any case, said agencies shall inform the PDEA of their anti-drug operations within twenty-four (24) hours from the time of actual custody of the suspects or seizure of said drugs and substances, and shall regularly update the PDEA on the status of the cases involving the said anti-drug operations; x x x

[11] *People v. Santos, Jr.*, G.R. No. 175593, October 17, 2007, 536 SCRA 489.

Joselito "Jojo" Nasara *y* Dahay, is ACQUITED for failure of the prosecution to prove his guilt beyond reasonable doubt.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections who is ORDERED to release appellant, unless he is being lawfully held for another offense, and to inform this Court of action taken within ten (10) days from notice hereof.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 188330. August 25, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGELIO J. ROSIALDA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; PRESENT AND PROVED BEYOND REASONABLE DOUBT IN CASE AT BAR.— In *People v. Darisan,* the Court enumerated the elements of the crime of sale of dangerous drugs: In a prosecution for illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. One with the RTC and the CA, we find the above elements present and proved beyond reasonable doubt in the instant case through the evidence and testimonies presented by the prosecution.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDING OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES ARE GIVEN GREAT RESPECT AND GENERALLY NOT DISTURBED BY THE SUPREME COURT.— Affirmed by the appellate court, the RTC gave full credence to the testimonies of PO1 Panis and the other police officers. Such finding of the trial court must be given great respect and shall generally not be disturbed by this Court. This principle was revisited in *Sumbillo v. People of the Philippines*, where this Court reiterated that: The assessment of the credibility of witnesses and their testimonies is best undertaken by the trial court due to its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination. x x x The findings of the trial court on such matters are binding and conclusive on the appellate court unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted, which is not true in the present case.

3. ID.; ID.; ID.; FRAME-UP; FOR THE DEFENSE OF FRAME-UP TO PROSPER, THE ACCUSED MUST PRESENT CLEAR AND CONVINCING EVIDENCE OF SUCH FACT.— As correctly ruled by the courts *a quo*, for the defense of frame-up to prosper, the accused must present clear and convincing evidence of such fact. It must be noted at this juncture that a *prima facie* case against Rosialda had already been established. The burden of evidence now lies with him to prove his defense of frame-up. Correlatively, the Court ruled in *People v. Rodrigo*: Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, **the burden of evidence then shifts to the defense** which shall then test the strength of the prosecution's case either by showing that no crime was in fact committed or that the accused could not have committed or did not commit the imputed crime, or at the very least, by casting doubt on the guilt of the accused.

4. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); FAILURE TO COMPLY WITH THE PROCEDURE OUTLINED UNDER SECTION 21, ARTICLE II THEREOF IS NOT FATAL; EXPLAINED.— Anent the second element, Rosialda raises

the issue that there is a violation of Sec. 21, Art. II of RA 9165, particularly the requirement that the alleged dangerous drugs seized by the apprehending officers be photographed "in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel." Rosialda argues that such failure to comply with the provision of the law is fatal to his conviction. This contention is untenable. The Court made the following enlightening disquisition on this matter in *People v. Rivera*: xxx **The failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to said guidelines, is not fatal and does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible.** Indeed, the implementing rules offer some flexibility when a proviso added that 'non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.' The same provision clearly states as well, that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved. **This Court can no longer find out what justifiable reasons existed, if any, since the defense did not raise this issue during trial. Be that as it may, this Court has explained in *People v. Del Monte* that what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.** The existence of the dangerous drug is a condition *sine qua non* for conviction for the illegal sale of dangerous drugs. The dangerous drug itself constitutes the very *corpus delicti* of the crime and the fact of its existence is vital to a judgment of conviction. Thus, it is essential that the identity of the prohibited drug be established beyond doubt. The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. **To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between**

the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence. In the instant case, we find that the prosecution has adequately showed the continuous and unbroken possession and subsequent transfers of the plastic sachet containing dangerous drugs from the time accused-appellant Rosialda handed it to PO1 Panis to consummate the sale of illicit drugs until it was offered in court. The fact that the plastic sachet containing *shabu* was immediately marked by PO1 Panis with such marking remaining until the plastic sachet was presented in court persuasively proves not only the identity of the *shabu* as seized from Rosialda, but more importantly that it is the same item seized from the buy-bust operation. Its integrity and evidentiary value were, thus, duly preserved. Consequently, the CA correctly appreciated that the chain of custody of the seized drug remains unbroken. Accordingly, the conviction of accused-appellant Rosialda must be maintained.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the February 17, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 02968, which affirmed the Decision[2] dated April 27, 2007 of the Regional Trial Court (RTC), Branch 164 in Pasig City, finding accused-appellant Rogelio Rosialda guilty of violating Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous*

[1] *Rollo*, pp. 2-18. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Rosalinda Asuncion-Vicente.

[2] CA *rollo*, pp. 14-18.

Drugs Act of 2002. The RTC sentenced accused-appellant to life imprisonment and imposed upon him a fine of PhP 500,000, with the accessory penalties provided under Sec. 35 of RA 9165.

The Facts

On March 27, 2003, the Mayor's Special Action Team, City Hall Detachment, Pasig City Police, received information from Brgy. Councilor Antonio Santos of Brgy. Rosario, Pasig City, that one, *alias* "Bong," was selling *shabu* (methylamphetamine hydrochloride) in the vicinity. Santos gathered his information from an informant. The police then constituted a team in coordination with the Philippine Drug Enforcement Agency to conduct a buy-bust operation against alias "Bong." Police Officer 1 (PO1) Roland A. Panis was designated poseur-buyer, who was supplied with a one hundred peso (PhP 100) bill as buy-bust money, with which he marked his initials "RAP."

Accompanied by Santos' informant, the police went to Sampaguita Street, Jabson Site, Brgy. Rosario, Pasig City to conduct the buy-bust operation. Upon reaching the place, the informant led PO1 Panis to Bong, while the other police officers stood back waiting for the designated signal from the poseur-buyer. After the introductions, Bong asked PO1 Panis and the informant what they wanted, and the two said they wanted "to score," a code that meant to purchase *shabu*. Upon being asked, PO1 Panis replied he wanted PhP 100 worth of *shabu* while handing Bong the marked PhP 100 bill. When handed a plastic sachet of white crystalline powder, PO1 Panis then signaled the other policemen that the buy-bust had been carried out, and they converged on PO1 Panis, the informant, and Bong. PO1 Panis then held Bong's hand and introduced himself as a police officer while informing him of his violation and apprising him of his constitutional rights. Thereafter, PO1 Panis marked the plastic sachet as "Exh A RAP 3/27/03."

At the police station, Bong was identified as accused-appellant Rogelio Rosialda. There, too, PO1 Panis then turned over the plastic sachet to Police Senior Inspector Rodrigo Villaruel, who prepared a laboratory examination request, addressed to the

Eastern Police District Crime Laboratory Office. A certain PO1 Mariano brought the plastic sachet with the examination request to the crime laboratory where it was received by a certain PO1 Chuidian. The contents of the plastic sachet were then examined by Police Inspector (P/Insp.) Lourdeliza Gural, who prepared the corresponding Chemistry Report No. D-548-03E, with the following findings:

> FINDINGS
>
> Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the tests for the presence of Methylamphetamine hydrochloride, a dangerous drugs (Exh. "C")[3]

Thus, the following Information[4] dated March 28, 2003 was filed against Rosialda for violation of Sec. 5, Article II of RA 9165:

> On or about March 27, 2003 in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Roland A. Panis, a police poseur buyer, one (1) small heat-sealed transparent plastic sachet, containing 0.03 gram of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.
>
> Contrary to law.

The case before the RTC was docketed as Criminal Case No. 12267-D entitled *People of the Philippines v. Rogelio Rosialda y Jamot @ Bong*.

At his arraignment, Rosialda pleaded not guilty. Pre-trial ensued where, notably, the parties stipulated on the following facts:

> (1) on the existence of the specimen (white crystalline substance contained in the plastic sachet marked as "Exh A RAP 3/27/03");

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[3] *Rollo,* p. 4.

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

(2) that a request for the examination of the specimen was made;

(3) that P/Insp. Gural examined the same and, as a result, issued Chemistry Report No. D-548-03E;

(4) that P/Insp. Gural had no personal knowledge from whom the specimen was taken; and,

(5) that the examination led to the identification of the specimen as methylamphetamine hydrochloride or *shabu*.

During the trial proper, the prosecution presented as witnesses PO1 Panis, and three other police officers to corroborate his testimony: PO1 Janet Sabo, PO3 Arturo San Andres, and Senior Police Officer 1 Amilassan Salisa, all from the Pasig City Police Station, City Hall Detachment. P/Insp. Gural was not presented as a witness during the hearing.

The defense, on the other hand, presented as witnesses accused-appellant Rosialda, Frances Diana Rosialda, and Silflor C. Velasco.

Rosialda testified that on March 24, 2003 at about 2:00 p.m., he was smoking beside their house when several people ran past the area. After a while, two (2) armed men followed, approached him, and asked whether he knew the persons who were running in front of them. He answered in the negative, whereupon, he was restrained and frisked at gun point. Nothing illegal was recovered from his person. Continuing, Rosialda related that he was then taken to the Rizal Medical Center where he was made to sign a document. Then he was brought to the police station at the Pasig City Hall and there he was detained. He was informed that he would be charged with violation of Secs. 5 and 11 of RA 9165. He was then told by PO1 Panis to just settle the case.

The defense's second witness, Frances Rosialda, Rosialda's daughter, corroborated her father's testimony regarding his apprehension, except as to the date. She testified that her father was taken on March 27, 2003, not March 24, 2003.

The third witness, Velasco, also corroborated the testimony of Rosialda on his being arrested. But the witness testified also

that the incident happened on March 27 and not March 24, 2003.

Subsequently, the RTC rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, the court finds accused Rosialda *y* Jamot @ Bong GUILTY beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165 and hereby imposes upon him the penalty of life imprisonment and a fine of Five Hundred Thousand (Php500,000.00) Pesos, with the accessory penalties provided for under Section 35 of the said law.
>
> The plastic sachet containing *shabu* (Exhs "D" and "D-1") is hereby ordered confiscated in favor of the government and turned over to the Philippine Drug Enforcement Agency for destruction.
>
> With costs against the accused.
>
> SO ORDERED.

From the above decision, accused-appellant filed a Notice of Appeal[5] dated April 30, 2007.

The appeal was docketed before the CA as CA-G.R. CR No. 02968. Eventually, the CA rendered the assailed decision affirming Rosialda's conviction, the *fallo* of which reads:

> WHEREFORE, premises considered, the Appeal is hereby **DENIED**. The challenged Decision is **AFFIRMED** *in toto*.

In its Decision, the CA found that the elements of the crime were present in the case. Moreover, it found that Rosialda's defense of frame-up was not proved, holding that for the defense of frame-up to prosper, clear evidence of ill-motive on the part of the arresting officers must be shown on why they would impute false charges against the accused. The CA found that the self-serving allegations of Rosialda were insufficient. In addition, the appellate court cited the doctrine that the defense of frame-up, like *alibi*, has been generally viewed by the Court with disfavor as it is easily concocted.

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[5] *Id.* at 19.

Anent Rosialda's claim of inconsistencies in the testimonies of the prosecution witnesses, the CA found them to be minor ones which did not affect the veracity of the testimonies.

Rosialda also questioned the admissibility of the Chemistry Report, arguing that since issuing officer P/Insp. Gural was not presented as a witness, said report is inadmissible. The CA dismissed such argument ruling that there was no need to present P/Insp. Gural, given the stipulations entered into by the parties at the pre-trial of the case. Moreover, the CA enunciated that the findings in the report are entries in official records made in the course of official duty, and as such, they are *prima facie* evidence of the facts stated in the report.

The issue of the police officers' non-compliance with Sec. 21, Article II of RA 9165 was also raised by Rosialda before the CA. However, relying on *People v. Pringas*,[6] the CA ruled that the failure to comply with Sec. 21 does not render the arrest of the accused illegal nor the items seized/confiscated inadmissible, for as long as there is a justifiable ground for such failure, and the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer.

Finally, as to the chain of custody of the seized item, the CA found that the facts and evidence presented show that such chain was unbroken from the time the sale was consummated, the marking of the specimen, and until it was delivered to the Eastern Police District Crime Laboratory Office for examination to the surrender of the specimen to the trial prosecutor who offered it to the RTC as evidence.

Hence, the instant appeal.

The Issues

Unconvinced, Rosialda raises in his Supplemental Brief the following issues for our consideration:

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[6] G.R. No. 175928, August 31, 2007, 531 SCRA 828.

1. Whether there was ill-motive on the part of the arresting officer to give credence to the accused's allegation that he was framed; and,

2. Whether the chain of custody of the alleged illegal drugs was indeed unbroken.

The Ruling of the Court

The appeal is bereft of merit.

The first paragraph of Sec. 5, Art. II of RA 9165 penalizes the selling of dangerous drugs, thus:

> 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.

In *People v. Darisan*,[7] the Court enumerated the elements of the crime of sale of dangerous drugs:

> In a prosecution for illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.

One with the RTC and the CA, we find the above elements present and proved beyond reasonable doubt in the instant case through the evidence and testimonies presented by the prosecution.

The first element was proved by the testimonies of the police officers who conducted the buy-bust operation. For clarity, we quote the testimony of poseur-buyer PO1 Panis:

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[7] G.R. No. 176151, January 30, 2009, 577 SCRA 486, 490.

DIRECT EXAMINATION

Prosecutor Bautista: Mr. Witness, you are a member of Mayor Special Action Team (sic)?

PO1 Panis: Yes, sir.

Q: As a member of Mayor Special Action Team, will you tell us what you usually do?

A: We are task[ed] to apprehend person of people (sic) engaged in illegal vices particularly on illegal drugs, sir.

Q: Do you know the accused in this case?

A: Yes, sir, he is present right now.

Q: Why do you know him?

A: I arrested him, sir.

Q: Why was he arrested?

A: Because he sold me illegal drugs of *shabu* (*sic*), sir.

Q: Where was he arrested?

A: Sampaguita St., Jabson Site, Rosario, Pasig City.

Q: When was he arrested?

A: Around 3:30 p.m., March 27, [2003], sir.

Q: Will you tell us the circumstances of this buy-bust operation?

A: At about 2 p.m., we received a phone call from one Kagawad Antonio Santos, "ka Tonying" of Parang, Rosario, he talked to our chief Police Inspector Villaroel, sir.

Q: What was the conversation all about?

A: After their conversation he ordered us to go to the office of Ka Tonying to give us the information, sir.

Q: Did you heed this order?

A: Yes, sir.

Q: And what did you find out?

A: We conducted a buy-bust operation and Inspector Villaroel gave me money, ₱100 peso bill to use in buying illegal drugs from one *alias* "Bong".

Q: Were you able to proceed to this target area?

A: Yes, sir.

Q: What time was it when you proceeded to the area?

A: More or less 3:15 p.m., sir.

Q: Will you tell us what happened then?

A: We arrived in the area, I was with the civilian asset, our informant saw *alias* "Bong", he approached him together with me and then I was introduced as a friend, sir.

Q: Who was your companion at the time?

A: At the time the civilian informant, sir.

Q: You were introduced to the accused?

A: Yes, sir.

Q: And upon introduction, what transpired?

A: I was asked "*Anong kailangan naming*" and we uttered "*Iiscore kami ng shabu*."

Q: And what was your answer?

A: He asked me how much, sir.

Q: And what did you say?

A: I told him ₱100, after that I handed the money, sir.

xxx xxx xxx

Q: So, when this stuff was handed to you by the accused, you made the pre-arranged signal by scratching your head?

A: Yes, sir.

Q: Afterwards, what did you do?

A: I immediately held his hand and I introduced myself as a Police Officer and told him of his violation and afterwards we have *konting pagtatalo* and he resisted, sir.

Q: Did you inform him of his constitutional rights?

A: Yes, sir.[8]

Affirmed by the appellate court, the RTC gave full credence to the testimonies of PO1 Panis and the other police officers. Such finding of the trial court must be given great respect and shall generally not be disturbed by this Court. This principle was revisited in *Sumbillo v. People of the Philippines*,[9] where this Court reiterated that:

> The assessment of the credibility of witnesses and their testimonies is best undertaken by the trial court due to its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination. x x x The findings of the trial court on such matters are binding and conclusive on the appellate court unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted, which is not true in the present case.

Rosialda, however, continues to question the testimonies of the prosecution witnesses asserting that the incident as narrated by them did not happen. He claims that he was framed. This defense, however, is unsupported by the evidence.

As correctly ruled by the courts *a quo*, for the defense of frame-up to prosper, the accused must present clear and convincing evidence of such fact. It must be noted at this juncture that a *prima facie* case against Rosialda had already been established. The burden of evidence now lies with him to prove his defense of frame-up. Correlatively, the Court ruled in *People v. Rodrigo*:[10]

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[8] *Rollo*, pp. 10-13.

[9] G.R. No. 167464, January 21, 2010.

[10] G.R. No. 176159, September 11, 2008, 564 SCRA 584, 596.

Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, **the burden of evidence then shifts to the defense** which shall then test the strength of the prosecution's case either by showing that no crime was in fact committed or that the accused could not have committed or did not commit the imputed crime, or at the very least, by casting doubt on the guilt of the accused. (Emphasis supplied.)

Thus, in *People v. Hernandez*,[11] the Court dismissed the defense of frame-up relied upon by the accused for failing to present clear and convincing evidence to prove his allegations. The Court said:

The defense of denial and frame-up has been invariably viewed by this Court with disfavor, for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of the Dangerous Drugs Act. **In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence.** In the case before us, appellants miserably failed to present any evidence in support of their claims. Aside from their self-serving assertions, no plausible proof was presented to bolster their allegations. (Emphasis supplied.)

The Court held succinctly in *People v. Agulay*:[12]

Apart from his defense that he is a victim of a frame-up and extortion by the police officers, accused-appellant could not present any other viable defense. Again, while the presumption of regularity in the performance of official duty by law enforcement agents should not by itself prevail over the presumption of innocence, for the claim of frame-up to prosper, the defense must be able to present clear and convincing evidence to overcome this presumption of regularity.

Anent the second element, Rosialda raises the issue that there is a violation of Sec. 21, Art. II of RA 9165, particularly the requirement that the alleged dangerous drugs seized by the apprehending officers be photographed "in the presence of the accused or the person/s from whom such items were confiscated

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[11] G.R. No. 184804, June 18, 2009, 589 SCRA 625, 642-643.

[12] G.R. No. 181747, September 26, 2008, 566 SCRA 571, 599-600.

and/or seized, or his/her representative or counsel." Rosialda argues that such failure to comply with the provision of the law is fatal to his conviction.

This contention is untenable.

The Court made the following enlightening disquisition on this matter in *People v. Rivera*:[13]

> The procedure to be followed in the custody and handling of seized dangerous drugs is outlined in Section 21, paragraph 1, Article II of Republic Act No. 9165 which stipulates:
>
> > (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.
>
> The same is implemented by Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, *viz*.:
>
> > (a) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.
>
> **The failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to said guidelines, is not fatal**

[13] G.R. No. 182347, October 17, 2008, 569 SCRA 879, 897-899.

and does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible. Indeed, the implementing rules offer some flexibility when a proviso added that 'non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items.' The same provision clearly states as well, that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved.

This Court can no longer find out what justifiable reasons existed, if any, since the defense did not raise this issue during trial. Be that as it may, this Court has explained in *People v. Del Monte* that what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. The existence of the dangerous drug is a condition *sine qua non* for conviction for the illegal sale of dangerous drugs. The dangerous drug itself constitutes the very *corpus delicti* of the crime and the fact of its existence is vital to a judgment of conviction. Thus, it is essential that the identity of the prohibited drug be established beyond doubt. The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.

To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence. (Emphasis supplied.)

In the instant case, we find that the prosecution has adequately showed the continuous and unbroken possession and subsequent transfers of the plastic sachet containing dangerous drugs from the time accused-appellant Rosialda handed it to PO1 Panis to consummate the sale of illicit drugs until it was offered in court. The fact that the plastic sachet containing *shabu* was immediately marked by PO1 Panis with such marking remaining until the

plastic sachet was presented in court persuasively proves not only the identity of the *shabu* as seized from Rosialda, but more importantly that it is the same item seized from the buy-bust operation. Its integrity and evidentiary value were, thus, duly preserved. Consequently, the CA correctly appreciated that the chain of custody of the seized drug remains unbroken. Accordingly, the conviction of accused-appellant Rosialda must be maintained.

WHEREFORE, the appeal is *DENIED* for lack of merit. The February 17, 2009 CA Decision in CA-G.R. CR No. 02968 is hereby *AFFIRMED IN TOTO*.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 189091. August 25, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ARMAN APACIBLE *y* RODRIGUEZ,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IDENTIFICATION OF THE ACCUSED AS THE MALEFACTOR, UPHELD.— This Court finds no compelling reason to deviate from the appellate court's affirmance of appellant's conviction. The narration of the victim's wife Mylene is too graphic to be denied credence.

xxx Mylene's credibility becomes more pronounced when note is taken that appellant is her first cousin who frequently visited their house. Appellant's claim that he was misidentified by Mylene, there being no showing that the room where the stabbing occurred was well-lit, fails. Recall that Mylene, immediately before witnessing the stabbing by appellant, heard appellant curse her husband. She in fact shouted and sought the help of appellant's mother. The proximity of appellant to where Mylene was at the time of the killing, in addition to Mylene's familiarity with her first cousin-appellant who used to frequent their house, dissipates any nagging doubts that she erred in identifying him as the malefactor.

2. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; REDUCTION OF THE AWARD THEREOF, PROPER IN CASE AT BAR.— The Court reduces the amount of civil indemnity awarded by the appellate court from ₱75,000 to ₱50,000, as determined by the trial court. *People v. Anod* explains why the award of ₱75,000 as civil indemnity lies only in cases where the proper imposable penalty is death, *viz*: It is worth stressing that, at the outset, the appellant, together with Lumbayan, was sentenced by the RTC to suffer the penalty of ***reclusion perpetua***. Thus, the CA's reliance on our ruling in *People v. dela Cruz* was misplaced. In *dela Cruz,* this Court cited our ruling in *People v. Tubongbanua*, wherein we held that the civil indemnity imposed should be ₱75,000.00. However, the instant case does not share the same factual milieu as *dela Cruz* and *Tubongbanua*. In the said cases, at the outset, the accused were sentenced to suffer the penalty of **death**. However, in view of the enactment of Republic Act No. 9346 or the Act Prohibiting the Imposition of the Death Penalty on June 24, 2006, the penalty meted to the accused was reduced to *reclusion perpetua*. This jurisprudential trend was followed in the recent case of *People of the Philippines v. Generoso Rolida y Moreno, etc.*, where this Court also increased the civil indemnity from ₱50,000.00 to ₱75,000.00. Based on the foregoing disquisitions and the current applicable jurisprudence, we hereby reduce the civil indemnity awarded herein to ₱50,000.00. xxx As reflected earlier, appellant was sentenced by the trial court to *reclusion perpetua*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

From the Court of Appeals Decision affirming with modification, the trial court's decision convicting him of Murder, Arman Apacible *y* Rodriguez (appellant) comes to the Court on appeal.

The accusatory portion of the Information filed against appellant before the Regional Trial Court (RTC) of Balayan, Batangas reads:

> That on or about the 23rd day of May, 1999 at about 8:30 o'clock in the evening, at Barangay Luna, Municipality of Tuy, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed instrument, with intent to kill, with treachery and evident premeditation and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said weapon one **Arnold Vizconde *y* Famoso** thereby inflicting upon the latter multiple stab wounds in his body, which directly caused his death.[1] (emphasis supplied)

From the account of prosecution witness Mylene Vizconde (Mylene), widow of Arnold Vizconde (the victim), the following transpired on the day her husband died:

On May 23, 1999, starting at about 2:00 p.m., her husband, her uncle and appellant, who is her first cousin, had a drinking spree at a neighbor's house.[2] The spree lasted up to 8:30 p.m. following which her husband returned home and slept in their

[1] Records, p. 1.

[2] Transcript of Stenographic Notes (TSN), May 18, 2005, p. 5.

room.[3] She thereupon placed their eight-month old child beside him and went to the kitchen to prepare milk for the child. Shortly thereafter, she, from a distance of about three to four meters, heard appellant utter "*Putang ina mo, papatayin kita!*" and then saw appellant, through the open door to the room, stab her husband several times.[4]

She thus shouted for help and called appellant's mother with whom he lives about "five (5) steps away."[5] While appellant's mother who heeded her call repaired to the house, the latter and appellant left as they saw the victim drenched in blood.[6]

She then brought her child to a neighbor and sought help from the Tuy Police Station who responded and conducted an investigation with dispatch.[7]

At the time of his death, the victim was 26 years old and was working at the National Power Corporation, earning ₱10,000 per month.[8]

Mylene surmised that appellant killed her husband in view of his (her husband's) refusal to amicably settle the malicious mischief case he had filed against appellant's brother for breaking the glass windshield of his car.[9]

Appellant, interposing alibi, claimed that after the victim whom he treated as a brother left, he too left with a friend for Cavite.[10] He surmised that he is being charged because the alleged breaking by his brother of the windshield of the victim's car was the subject of their conversation during the drinking spree.[11]

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[3] *Id.* at 6.

[4] *Id.* at 8-10.

[5] *Id.* at 13.

[6] *Id.* at 12-14.

[7] *Id.* at 15.

[8] *Id.* at 17.

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

[10] *Id.* at 11.

[11] *Id.* at 13.

By Decision[12] of January 31, 2008, Branch 11 of the Balayan RTC which convicted him disposed:

> WHEREFORE, the Court finds the accused Arman Apacible **GUILTY** beyond reasonable doubt of the crime of Murder, defined and penalized under Art. 248 of the Revised Penal Code, as amended by RA 7659, and hereby sentences him to suffer imprisonment of ***Reclusion Perpetua*** and to indemnify the heirs of victim Arnold Vizconde *y* Famoso the sum of **FIFTY THOUSAND (₱50,000.00) PESOS** as death indemnity and **FIFTY THOUSAND (₱50,000.00) PESOS as moral damages.**
>
> Considering that accused Arman Apacible *y* Rodriguez is a detention prisoner he shall be credited with the period of his detention during his preventive imprisonment. (emphasis in the original; underscoring supplied)

In his Brief filed before the Court of Appeals, appellant questioned, in the main, Mylene's motive in identifying him as the assailant of her husband, the latter having allegedly refused appellant's request to amicably settle the malicious mischief case filed against appellant's brother. And appellant challenged Mylene's alleged seeing him stab her husband, there being "no mention" if the *locus criminis* was well-lighted.

The appellate court, by Decision of June 23, 2009, *affirmed with modification* the trial court's decision, disposing as follows:

> WHEREFORE, premises considered, the Decision of Branch 10, Regional Trial Court of Balayan, Batangas dated January 31, 2008 in Criminal Case No. 4410 finding accused-appellant Arman Apacible *y* Rodriguez **GUILTY** beyond reasonable doubt of the crime of murder is **AFFIRMED** with the **MODIFICATIONS** that the award of civil indemnity shall be increased from ₱50,000.00 to ₱75,000.00 and that he is further ordered to indemnify the heirs of the victim ₱25,000.00 as exemplary damages.[13] (emphasis found in the original)

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[12] CA *rollo*, p. 15.

[13] Penned by Associate Justice Mariano C. Del Castillo, with the concurrence of Associate Justices Monina Arevalo-Zenarosa and Priscilla J. Balatazar-Padilla, *rollo* 2-13.

The appellate court increased the award of civil indemnity from ₱50,000 to ₱75,000 in light of recent jurisprudence,[14] and awarded exemplary damages in the amount of ₱25,000 to the heirs of the victim in view of the attending qualifying circumstance of treachery.

Hence, the present appeal.

This Court finds no compelling reason to deviate from the appellate court's affirmance of appellant's conviction. The narration of the victim's wife Mylene is too graphic to be denied credence:

Q While you were preparing milk for your child, what happened?

A **I saw Arman already stabbing my husband, sir.**

Q Where was Arman when you said you saw him stabbing your husband?

A I was at the room, sir.

Q **What was your distance at that time when you saw your husband being stabbed by Arman?**

A **Very near, sir.**

Q When you said very near, how near is that?

A (Witness pointing from the witness stand up to a distance of around 3 to 4 meters.)

COURT: (To the witness on clarificatory questions.)

Q **Before you can enter your room, is there a door?**

A **The door was open, Your Honor.**

Q What kind of door was that?

A It was a swing type door, Your Honor.

Q There is no spring on the door?

A There is none, Your Honor.

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[14] *People v. de Guzman*, G.R. No. 173477, February 4, 2009 *citing People v. Tubongbanua*, G.R. No. 171271, August 31, 2006.

Q **How were you able to see that your husband was stabbed by the accused when you said you were in the kitchen?**

A **I saw him, Your Honor.**

Q Through the door opening?

A Yes, Your Honor.[15] (emphasis and underscoring supplied)

Mylene's credibility becomes more pronounced when note is taken that appellant is her first cousin who frequently visited their house.

Appellant's claim that he was misidentified by Mylene, there being no showing that the room where the stabbing occurred was well-lit, fails. Recall that Mylene, immediately before witnessing the stabbing by appellant, heard appellant curse her husband. She in fact shouted and sought the help of appellant's mother. The proximity of appellant to where Mylene was at the time of the killing, in addition to Mylene's familiarity with her first cousin-appellant who used to frequent their house, dissipates any nagging doubts that she erred in identifying him as the malefactor.

The Court thus affirms the appellate court's Decision, with modification, however. The Court reduces the amount of civil indemnity awarded by the appellate court from ₱75,000 to ₱50,000, as determined by the trial court. *People v. Anod*[16] explains why the award of ₱75,000 as civil indemnity lies only in cases where the proper imposable penalty is death, *viz*:

It is worth stressing that, at the outset, the appellant, together with Lumbayan, was sentenced by the RTC to suffer the penalty of ***reclusion perpetua***. Thus, the CA's reliance on our ruling in *People v. dela Cruz* was misplaced. In *dela Cruz*, this Court cited our ruling in *People v. Tubongbanua*, wherein we held that the civil indemnity imposed should be ₱75,000.00. However, the instant case does not share the same factual milieu as *dela Cruz* and

[15] TSN, May 18, 2005, pp. 8-9.

[16] G.R. No. 186420, August 25, 2009.

Tubongbanua. In the said cases, at the outset, the accused were sentenced to suffer the penalty of **death**. However, in view of the enactment of Republic Act No. 9346 or the Act Prohibiting the Imposition of the Death Penalty on June 24, 2006, the penalty meted to the accused was reduced to *reclusion perpetua*. This jurisprudential trend was followed in the recent case of *People of the Philippines v. Generoso Rolida y Moreno, etc.*, where this Court also increased the civil indemnity from ₱50,000.00 to ₱75,000.00. Based on the foregoing disquisitions and the current applicable jurisprudence, we hereby reduce the civil indemnity awarded herein to ₱50,000.00. x x x (italics in the original; emphasis and underscoring supplied; citations omitted)

As reflected earlier, appellant was sentenced by the trial court to *reclusion perpetua*.

WHEREFORE, the assailed Decision of the Court of Appeals is *AFFIRMED* with *MODIFICATION* in that, in accordance with the discussion in the immediately preceding paragraph, civil indemnity is reduced to ₱50,000.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

EN BANC

[G.R. No. 191988. August 31, 2010]

ATTY. EVILLO C. PORMENTO, *petitioner, vs.* **JOSEPH "ERAP" EJERCITO ESTRADA and COMMISSION ON ELECTIONS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; EXISTENCE OF ACTUAL CASE OR CONTROVERSY; ABSENT IN CASE AT BAR.— Private respondent was not elected President the second time he ran.

Since the issue on the proper interpretation of the phrase "any reelection" will be premised on a person's second (whether immediate or not) election as President, there is no case or controversy to be resolved in this case. No live conflict of legal rights exists. There is in this case no definite, concrete, real or substantial controversy that touches on the legal relations of parties having adverse legal interests. No specific relief may conclusively be decreed upon by this Court in this case that will benefit any of the parties herein. As such, one of the essential requisites for the exercise of the power of judicial review, the existence of an actual case or controversy, is sorely lacking in this case. As a rule, this Court may only adjudicate actual, ongoing controversies. The Court is not empowered to decide moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it. In other words, when a case is moot, it becomes non-justiciable.

2. ID.; ID.; ID.; ID.; MOOT ACTION; ELUCIDATED.— An action is considered "moot" when it no longer presents a justiciable controversy because the issues involved have become academic or dead or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. There is nothing for the court to resolve as the determination thereof has been overtaken by subsequent events.

APPEARANCES OF COUNSEL

George Erwin M. Garcia Joan M. Padilla & Julie Ann V. Chang for private respondent.

The Solicitor General for public respondent.

R E S O L U T I O N

CORONA, *C.J.*:

What is the proper interpretation of the following provision of Section 4, Article VII of the Constitution: "[t]he President shall not be eligible for any reelection?"

The novelty and complexity of the constitutional issue involved in this case present a temptation that magistrates, lawyers, legal scholars and law students alike would find hard to resist. However, prudence dictates that this Court exercise judicial restraint where the issue before it has already been mooted by subsequent events. More importantly, the constitutional requirement of the existence of a "case" or an "actual controversy" for the proper exercise of the power of judicial review constrains us to refuse the allure of making a grand pronouncement that, in the end, will amount to nothing but a non-binding opinion.

The petition asks whether private respondent Joseph Ejercito Estrada is covered by the ban on the President from "any reelection." Private respondent was elected President of the Republic of the Philippines in the general elections held on May 11, 1998. He sought the presidency again in the general elections held on May 10, 2010. Petitioner Atty. Evillo C. Pormento opposed private respondent's candidacy and filed a petition for disqualification. However, his petition was denied by the Second Division of public respondent Commission on Elections (COMELEC).[1] His motion for reconsideration was subsequently denied by the COMELEC *en banc*.[2]

Petitioner filed the instant petition for *certiorari*[3] on May 7, 2010. However, under the Rules of Court, the filing of such petition would not stay the execution of the judgment, final order or resolution of the COMELEC that is sought to be reviewed.[4] Besides, petitioner did not even pray for the issuance of a temporary restraining order or writ of preliminary injunction.

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[1] Resolution dated January 10, 2010 penned by Commissioner Nicodemo T. Ferrer and concurred in by Commissioners Lucenito N. Tagle and Elias R. Yusoph. *Rollo*, pp. 21-46.

[2] Resolution dated May 4, 2010 penned by Commissioner Armando C. Velasco and concurred in by Chairperson Jose A.R. Melo and Commissioners Rene V. Sarmiento, Nicodemo T. Ferrer, Lucenito N. Tagle, Elias R. Yusoph and Gregorio Y. Larrazabal. *Id.*, pp. 47-51.

[3] Under Rule 65 in relation to Rule 64 of the Rules of Court.

[4] See Section 8, Rule 64 of the Rules of Court.

Hence, private respondent was able to participate as a candidate for the position of President in the May 10, 2010 elections where he garnered the second highest number of votes.[5]

Private respondent was not elected President the second time he ran. Since the issue on the proper interpretation of the phrase "any reelection" will be premised on a person's second (whether immediate or not) election as President, there is no case or controversy to be resolved in this case. No live conflict of legal rights exists.[6] There is in this case no definite, concrete, real or substantial controversy that touches on the legal relations of parties having adverse legal interests.[7] No specific relief may conclusively be decreed upon by this Court in this case that will benefit any of the parties herein.[8] As such, one of the essential requisites for the exercise of the power of judicial review, the existence of an actual case or controversy, is sorely lacking in this case.

As a rule, this Court may only adjudicate actual, ongoing controversies.[9] The Court is not empowered to decide moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it.[10] In other words, when a case is moot, it becomes non-justiciable.[11]

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[5] Benigno Simeon C. Aquino III garnered the highest number of votes and was therefore proclaimed as President.

[6] *See* discussion on the concept of "case" or "contoversy" in Cruz, Isagani, *PHILIPPINE POLITICAL LAW*, 2002 Edition, p. 259.

[7] *Id.*

[8] *Id.*

[9] *Honig v. Doe*, 484 U.S. 305 (1988).

[10] *Id*.

[11] While there are exceptions to this rule, none of the exceptions applies in this case. What may most probably come to mind is the "capable of repetition yet evading review" exception. However, the said exception applies only where the following two circumstances concur: (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration and (2) there is a reasonable expectation that the same complaining

An action is considered "moot" when it no longer presents a justiciable controversy because the issues involved have become academic or dead or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. There is nothing for the court to resolve as the determination thereof has been overtaken by subsequent events.[12]

Assuming an actual case or controversy existed prior to the proclamation of a President who has been duly elected in the May 10, 2010 elections, the same is no longer true today. Following the results of that elections, private respondent was not elected President for the second time. Thus, any discussion of his "reelection" will simply be hypothetical and speculative. It will serve no useful or practical purpose.

ACCORDINGLY, the petition is denied due course and is hereby *DISMISSED*.

SO ORDERED.

Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Brion, J., on leave.

Peralta, J., on official leave.

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party would be subjected to the same action again (*Lewis v. Continental Bank Corporation*, 494 U.S. 472 [1990]). The second of these requirements is absent in this case. It is highly speculative and hypothetical that petitioner would be subjected to the same action again. It is highly doubtful if he can demonstrate a substantial likelihood that he will "suffer a harm" alleged in his petition. (See *Honig v. Doe*, *supra*.)

[12] *Santiago v. Court of Appeals*, G.R. No. 121908, 26 January 1998, 285 SCRA 16.

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