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OF THE

PHILIPPINES

FROM

SEPTEMBER 28, 2010 TO OCTOBER 6, 2010

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MANILA
2014

Prepared
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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. 10-4-22-SC. September 28, 2010]

RE: SENIORITY AMONG THE FOUR (4) MOST RECENT APPOINTMENTS TO THE POSITION OF ASSOCIATE JUSTICES OF THE COURT OF APPEALS

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; PUBLIC OFFICE; APPOINTMENT THERETO; ELUCIDATED.— An appointment to a public office is the unequivocal act, of one who has the authority, of designating or selecting an individual to discharge and perform the duties and functions of an office or trust. Where the power of appointment is absolute and the appointee has been determined upon, no further consent or approval is necessary and the formal evidence of the appointment, the commission, may issue at once. The appointment is deemed complete once the last act required of the appointing authority has been complied with.

2. ID.; ID.; ID.; ID.; ID.; COMMISSION; DEFINED; NOT REQUIRED TO COMPLETE THE APPOINTMENT BUT ONLY TO FACILITATE THE EFFECTIVITY OF THE APPOINTMENT BY THE APPOINTEE'S RECEIPT AND ACCEPTANCE THEREOF.— In *Valencia v. Peralta*, the Court ruled that a written memorial that can render title to public office indubitable is required. This written memorial

is known as the commission. For purposes of completion of the appointment process, the appointment is complete when the commission is signed by the executive, and sealed if necessary, and is ready to be delivered or transmitted to the appointee. Thus, transmittal of the commission is an act which is done after the appointment has already been completed. It is not required to complete the appointment but only to facilitate the effectivity of the appointment by the appointee's receipt and acceptance thereof.

3. ID.; JUDICIAL DEPARTMENT; JUDICIARY REORGANIZATION ACT OF 1980 (*BATAS PAMBANSA BLG.* 129, AS AMENDED); ORGANIZATION OF THE COURT OF APPEALS; DATE THE COMMISSION HAS BEEN SIGNED BY THE PRESIDENT IS THE DATE OF THE APPOINTMENT AND WILL DETERMINE THE SENIORITY OF THE MEMBERS OF THE COURT OF APPEALS; BASIS.— For purposes of appointments to the judiciary, therefore, the date the commission has been signed by the President (which is the date appearing on the face of such document) is the date of the appointment. Such date will determine the seniority of the members of the Court of Appeals in connection with Section 3, Chapter I of BP 129, as amended by RA 8246. In other words, the earlier the date of the commission of an appointee, the more senior he/she is over the other subsequent appointees.It is only when the appointments of two or more appointees bear the same date that the order of issuance of the appointments by the President becomes material. This provision of statutory law (Section 3, Chapter I of BP 129, as amended by RA 8246) controls over the provisions of the 2009 IRCA which gives premium to the order of appointments as transmitted to this Court. Rules implementing a particular law cannot override but must give way to the law they seek to implement.

CARPIO, *J.*, *separate concurring opinion*:

1. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIARY REORGANIZATION ACT OF 1980 (*BATAS PAMBANSA BLG.* 129, AS AMENDED); SECTION 3, CHAPTER 1 THEREOF, CONSTRUED.— Section 3, Chapter I of *Batas Pambansa Blg.* 129, as amended by Republic Act No. 8246,

states: Chapter 1 Section 3. *Organization*. — There is hereby created a Court of Appeals which shall consist of a Presiding Justice and sixty-eight (68) Associate Justices who shall be appointed by the President of the Philippines. The Presiding Justice shall be so designated in his appointment, and **the Associate Justices shall have precedence according to the *dates of their respective appointments*, or when the appointments of two or more of them shall bear the same date, according to the order in which their appointments were issued by the President.** Any member who is reappointed to the Court after rendering service in any other position in the government shall retain the precedence to which he was entitled under his original appointment, and his service in the court shall, for all intents and purposes, be considered as continuous and uninterrupted. The highlighted portion of the above provision may be broken down into two parts: (1) when the appointments do not bear the same date and (2) when the appointments bear the same date. When the appointments do not bear the same date, precedence in seniority is based on the **dates of the respective appointments**. However, when the appointments bear the same date, precedence in seniority shall be based on the **order in which the appointments were issued by the President**. This is the clear language of Section 3, Chapter I of BP 129, as amended.

2. ID.; ID.; ID.; PREVAILS OVER SECTION 1, RULE II OF THE 2009 INTERNAL RULES OF THE COURT OF APPEALS; APPLICATION.— BP 129, as amended, prevails over Section 1, Rule II of the 2009 Internal Rules of the Court of Appeals, which ranks seniority based on "the order of appointments as officially transmitted to the Supreme Court." It is axiomatic that the Internal Rules of the CA cannot amend an existing law. At most, Section 1, Rule II of the 2009 Internal Rules of the CA applies only when the appointments bear the same date, in which case "the order of appointments as officially transmitted to the Supreme Court" is deemed "the order in which the appointments were issued by the President," as provided in Section 3, Chapter I of BP 129. Applying the law to the present case, Justices Fernandez, Peralta, Jr., and Hernando, whose appointment papers all bore the same date of 16 February 2010, were correctly ranked in the chronological order in which their appointments were issued by the President.

Justice Valenzuela's appointment paper, on the other hand, did not bear the same date, but was distinctly dated **later** – 24 February 2010. Under the same provision of BP 129, as amended, the date specified in Justice Valenzuela's appointment paper should determine her status in seniority.

3. ID.; ID.; ID.; ORGANIZATION OF THE COURT OF APPEALS; SENIORITY OF APPOINTEES; IN CASES WHERE THE APPOINTMENTS DO NOT BEAR THE SAME DATE, IT IS THE DATE SPECIFIED IN THE APPOINTMENT PAPERS THAT MUST SERVE AS THE RECKONING POINT IN DETERMINING PRECEDENCE IN SENIORITY; EXTRANEOUS FACTORS, NOT TO BE CONSIDERED.— In fact, the dates of appointment in the present case assume even greater importance. In fixing *in her own handwriting* the dates on the appointment papers of the four CA Justices, the President clearly intended some of the appointees to take precedence in seniority over the others. On the other hand, mechanically-stamped bar codes are meant only to authenticate the appointment papers and facilitate record keeping, and should not defeat the will of the appointing authority as signified by the specific dates fixed in the appointment papers. Neither should the transmittal letter to the Supreme Court, signed by Executive Secretary Leandro R. Mendoza, prevail over the dates of the appointment papers signed by the President. xxx [T]he seniority of the appointees, in cases where the appointments do not bear the same date, cannot be made to depend on extraneous factors such as clerical skill or messengerial speed. Where the appointments do not bear the same date, it is the date specified in the appointment papers that must serve as the reckoning point in determining precedence in seniority. Otherwise, the crucial issue of seniority with all its legal import and far-reaching consequences will be left to the predisposition of clerks or messengers, undermining the express will of the appointing authority in fixing the dates in the appointment papers. Thus, I concur that in determining seniority among appointees to the Court of Appeals whose appointments do not bear the same date, the date of appointment as stated in the appointment paper prevails over clerical matters like the numbering or sequencing of the bar code or the date of transmission of the appointment papers. This is regardless of when the appointments became complete with the acceptance of the appointment by

the appointees. **The law clearly specifies that for purposes of determining precedence in seniority in cases where the appointments do not bear the same date, it is the date of appointment that is the reckoning point.** The date of acceptance of the appointment by the appointee is of no consequence in determining seniority because the date of acceptance depends on the will of the appointee over which the appointing power has no control. Of course, if the appointee does not accept the appointment, the issue of seniority will not arise as to such appointee.

4. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; PUBLIC OFFICE; APPOINTMENT; ACCEPTANCE BY THE APPOINTEE IS THE LAST ACT NEEDED TO MAKE AN APPOINTMENT COMPLETE; RELEVANT RULINGS, CITED.— [T]he well-settled rule in our jurisprudence, that an appointment is a **process** that begins with the selection by the appointing power and ends with acceptance of the appointment by the appointee, ***stands***. As early as the 1949 case of *Lacson v. Romero*, this Court laid down the rule that acceptance by the appointee is the last act needed to make an appointment complete. The Court reiterated this rule in the 1989 case of *Javier v. Reyes.* In the 1996 case of *Garces v. Court of Appeals*, this Court emphasized that acceptance by the appointee is indispensable to complete an appointment. The 1999 case of *Bermudez v. Executive Secretary*, **cited in the *ponencia***, affirms this standing rule in our jurisdiction, to wit: The appointment is deemed complete once the last act required of the appointing authority has been complied with **and its acceptance thereafter by the appointee in order to render it effective**.

R E S O L U T I O N

CORONA, *C.J.*:

On March 10, 2010, the Office of the President transmitted to the Supreme Court the appointments of Court Appeals (CA) Associate Justices Myra G. Fernandez, Eduardo B. Peralta, Jr., Ramon Paul L. Hernando and Nina G. Antonio-Valenzuela. Their respective appointment papers were attached to the transmittal letter which read:

HON. REYNATO S. PUNO
Chief Justice
Supreme Court of the Philippines
Manila

Re: **Appointments to the Judiciary**

Sir:

I am pleased to transmit the appointment papers of the following:

	Appointees	**Positions**
xxx	x x x	x x x
5	Hon. Nina G. Antonio-Valenzuela	Associate Justice, CA
6	Hon. Myra G. Fernandez	Associate Justice, CA
7	Hon. Eduardo B. Peralta, Jr.	Associate Justice, CA
8	Hon. Ramon Paul L. Hernando	Associate Justice, CA
xxx	xxx	xxx

March 10, 2010.

Very truly yours,

(Sgd.)
LEANDRO R. MENDOZA

The respective appointment papers of Justices Fernandez, Peralta, Jr., Hernando and Antonio-Valenzuela bore the following dates and bar code numbers:

Name of Associate Justice	**Date of Appointment**	**Bar Code No.**
Justice Fernandez	February 16, 2010	55466
Justice Peralta, Jr.	February 16, 2010	55467
Justice Hernando	February 16, 2010	55468
Justice Antonio-Valenzuela	February 24, 2010	55465

All four newly appointed CA Justices took their oath before then Associate Justice, now Chief Justice, Renato C. Corona on March 10, 2010.

After some initial confusion, the four Justices were finally listed in the roster of the CA Justices in the following order of seniority: Justice Fernandez (as most senior), Justice Peralta, Jr., Justice Hernando and Justice Antonio-Valenzuela (as most junior). The ranking was based in a letter dated March 25, 2010 submitted by the members of the CA Committee on Rules to CA Presiding Justice Andres B. Reyes, Jr.

According to the CA Committee on Rules, there appears to be a conflict between certain provisions of the 2009 Internal Rules of the Court of Appeals (2009 IRCA). In particular, Section 1, Rule I thereof provides:

RULE I
THE COURT, ITS ORGANIZATION AND OFFICIALS

SECTION 1. *Composition of the Court of Appeals*. — Unless otherwise provided by law, the Court of Appeals is composed of a Presiding Justice and sixty-eight (68) Associate Justices. It sits *en banc*, or in twenty-three (23) Divisions of three (3) Justices each. The members of the Court are classified into three groups according to the order of their seniority. **The date and sequence of the appointment of the Justices determine their seniority courtwide**.

When a senior member is designated to act as Chairperson of a Division, he/she shall be designated as an "Acting Chairperson". In like manner, a junior member designated to act as senior member of a Division shall be an "Acting Senior Member." (Emphasis supplied)

On the other hand, Section 1, Rule II thereof states:

RULE II
RULE ON PRECEDENCE AND PROTOCOL

SECTION 1. *Concept*. — The Presiding Justice enjoys precedence over all the other members of the Court in all official functions. **The Associate Justices shall have precedence according to the order of their appointments as officially transmitted to the Supreme Court**. (Emphasis supplied)

The CA Committee on Rules opined:

As between the foregoing provisions, it may be conceded that Section 1, Rule II should prevail over Section 1, Rule I pursuant to the basic rule of statutory construction that gives premium to a specific provision over a general one. However, reckoned alongside the circumstances surrounding the appointment of the above-named Associate Justices, it is our considered view that any conflict between or confusion engendered by the above-quoted provisions should be resolved in accordance with Republic Act No. 8246, entitled "*An Act Creating Additional Divisions in the Court of Appeals, Increasing the Number of Court of Appeals Justices from Fifty-One (51) to Sixty-Nine (69), Amending for the Purpose Batas Pambansa Bilang 129, As Amended, Otherwise Known as the Judiciary Reorganization Act of 1990, Appropriating Funds Therefor, and for Other Purposes.*" Section of said law categorically states:

> "Section 1. Section 3, Chapter 1 of Batas Pambansa Blg. 129, as amended, is hereby further amended to read as follows:
>
> > 'Sec. 3. *Organization*. — There is hereby created a Court of Appeals which shall consist of a Presiding Justice and sixty-eight (68) Associate Justices who shall be appointed by the President of the Philippines. The Presiding Justice shall be so designated in his appointment, and *the Associate Justices shall have precedence according to the dates of their respective appointments, or when the appointments of two or more of them shall bear the same date, according to the order in which their appointments were issued by the President*.'"[1]

Evident from the foregoing provision is a clear legislative intent to determine the order of precedence seniority of this Court's Justices "according to the dates of their respective appointments." In addition to the general rule of construction that applicable legal provisions should, as far as practicable, always be harmonized with each other, the spirit and intent behind Republic Act No. 8246 should be given precedence if only because it is the enabling law to which the IRCA should conform. Moreover, given its clarity, it also goes without saying that Section 1 of the law should be applied according to its literal tenor, without equivocation and further need of extended ratiocination from the Committee.

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[1] Italics and underscoring in the original.

Applying Section 1, Rule I and Section I, Rule II of the IRCA *vis-a-vis* Section 1 of Republic Act No. 8246, the order of precedence/seniority among Justices Fernandez, Peralta, Jr. and Hernando should be determined according to the chronological order indicated in the March 10, 2010 letter of transmittal from Hon. Executive secretary Leandro R. Mendoza and the barcodes accompanying their respective appointment papers. On the other hand, having been appointed on February 16, 2010, it logically follows that said Justices collectively have precedence/seniority over Justice Valenzuela who, despite the placement of her name in said transmittal letter before the names of the other three new justices of the Court of Appeals and the lower bar code number accompanying her appointed, was appointed only on February 24, 2010.

x x x x x x x x x

While obviously intended to authenticate the appointment papers under consideration, the mechanically-stamped barcode cannot prevail over the date of appointment indicated in the President's own handwriting. Having been personally signed and dated by the President who is the appointing authority, the practical and legal import of said appointment papers of the Justices concerned should be upheld over that of the March 10, 2010 transmittal letter from the Executive Secretary. **It should, however, be pointed out that the foregoing interpretation of the Rule on precedence and seniority should only apply to the above named Associate Justices, in view of the peculiar circumstances which attended the issuance/transmission of their appointment papers**.[2]

Justice Antonio-Valenzuela disagreed with the interpretation of the CA Committee on Rules, insisting that she is the most senior among the four newly appointed CA Associate Justices pursuant to Section 1, Rule 2 of the 2009 IRCA which provides that seniority of the Associate Justices shall be determined "according to the order of their appointments as transmitted to the Supreme Court." She argued that "the final act in the process of appointing a member of the Judiciary is the transmittal of the appointment to the Supreme Court." She also took "serious exception" to the statement of the CA Committee on Rules that "the foregoing interpretation of the Rule on precedence and

[2] Emphasis supplied.

seniority should only apply to the above named Associate Justices, in view of the peculiar circumstances which attended the issuance/transmission of their appointment papers." According to her, there was nothing novel or peculiar about the circumstances attending the issuance and transmission of the four newly appointed members of the CA.

The matter was referred to the CA *en banc* for appropriate action. After deliberation, the CA *en banc* adopted the opinion of the CA Rules Committee. This was approved by this Court in a resolution dated July 20, 2010.

Justice Antonio-Valenzuela now seeks reconsideration of this Court's resolution dated July 20, 2010. She insists that all four CA Associate Justices whose seniority is involved in this matter "were appointed on March 10, 2010, the day that their appointments were transmitted by the Office of the President" to this Court.

We disagree.

An appointment to a public office is the unequivocal act, of one who has the authority, of designating or selecting an individual to discharge and perform the duties and functions of an office or trust.[3] Where the power of appointment is absolute and the appointee has been determined upon, no further consent or approval is necessary and the formal evidence of the appointment, the commission, may issue at once.[4] The appointment is deemed complete once the last act required of the appointing authority has been complied with.[5]

In *Valencia v. Peralta*,[6] the Court ruled that a written memorial that can render title to public office indubitable is required. This written memorial is known as the commission. For purposes

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[3] *Chavez v. Ronidel*, G.R. No. 180941, 11 June 2009, 589 SCRA 103.

[4] *Corpuz v. Court of Appeals*, 348 Phil. 801 (1998). Mechem, Law of Public Office and Officers, §114, at 46.

[5] *Bermudez v. Executive Secretary*, 370 Phil. 769 (1999).

[6] 118 Phil. 691 (1963).

of completion of the appointment process, the appointment is complete when the commission is signed by the executive, and sealed if necessary, and is ready to be delivered or transmitted to the appointee.[7] Thus, transmittal of the commission is an act which is done after the appointment has already been completed. It is not required to complete the appointment but only to facilitate the effectivity of the appointment by the appointee's receipt and acceptance thereof.

For purposes of appointments to the judiciary, therefore, the date the commission has been signed by the President (which is the date appearing on the face of such document) is the date of the appointment. Such date will determine the seniority of the members of the Court of Appeals in connection with Section 3, Chapter I of BP 129, as amended by RA 8246. In other words, the earlier the date of the commission of an appointee, the more senior he/she is over the other subsequent appointees. It is only when the appointments of two or more appointees bear the same date that the order of issuance of the appointments by the President becomes material. This provision of statutory law (Section 3, Chapter I of BP 129, as amended by RA 8246) controls over the provisions of the 2009 IRCA which gives premium to the order of appointments as transmitted to this Court. Rules implementing a particular law cannot override but must give way to the law they seek to implement.

In view of the foregoing, the CA *en banc* acted correctly when it adopted the view of the CA Rules Committee insofar as the reckoning of the seniority of CA Justices Fernandez, Peralta, Jr., Hernando and Antonio-Valenzuela is concerned but erred when it declared that the CA Rules Committee's interpretation applies only to the case of the four aforementioned Justices.

WHEREFORE, the motion for reconsideration of CA Justice Antonio-Valenzuela is hereby *DENIED* **with finality**.

SO ORDERED.

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[7] Mechem, *supra* at 47.

Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Carpio, J., see separate concurring opinion.

Carpio Morales, Nachura, and *Brion, JJ.,* join the separate concurring opinion of *J.* Carpio.

Sereno, J., concurs in the separate opinion of *J.* Carpio.

Abad, J., no part.

SEPARATE CONCURRING OPINION

CARPIO, *J.*:

On 10 March 2010, Executive Secretary Leandro R. Mendoza transmitted to the Supreme Court the appointment to the Court of Appeals of Nina G. Antonio-Valenzuela, Myra G. Fernandez, Eduardo B. Peralta, Jr., and Ramon Paul L. Hernando. The transmittal letter reads:

HON. REYNATO S. PUNO
Chief Justice
Supreme Court of the Philippines
Manila

Re: **Appointments to the Judiciary**

Sir:

I am pleased to transmit the appointment papers of the following:

	Appointees	**Positions**
xxx	x x x	x x x
5	Hon. Nina G. Antonio-Valenzuela	Associate Justice, CA
6	Hon. Myra G. Fernandez	Associate Justice, CA
7	Hon. Eduardo B. Peralta, Jr.	Associate Justice, CA
8	Hon. Ramon Paul L. Hernando	Associate Justice, CA
xxx	xxx	xxx

March 10, 2010.

Very truly yours,

(Sgd.)
LEANDRO R. MENDOZA

The respective appointment papers of the four Justices bore the following dates and bar code numbers:

Name of Associate Justices	Date of Appointment	Bar Code No.
Justice Fernandez	February 16, 2010	55466
Justice Peralta, Jr.	February 16, 2010	55467
Justice Hernando	February 16, 2010	55468
Justice Antonio-Valenzuela	February 24, 2010	55465

The appointment papers of Justices Fernandez, Peralta, Jr., and Hernando were all dated **16 February 2010**, while the appointment paper of Justice Valenzuela was dated **24 February 2010**.[1]

All four nominees accepted their respective appointments by taking the oath of office collectively on 10 March 2010. When the four new appointees were listed in the new roster of Court of Appeals Justices, Justices Fernandez, Peralta, Jr., and Hernando were ranked according to the chronological order indicated in the transmittal letter to the Supreme Court and the bar code number accompanying their respective appointment papers, while Justice Valenzuela was ranked last among the four.[2]

Justice Valenzuela in this motion for reconsideration insists that she is the most senior of the four CA Justices based on two grounds: (1) the order of the appointments as listed in the

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[1] Annexes "B", "C", "D", and "E" of the Motion for Reconsideration.

[2] Recommendation of the CA Committee on Rules to CA Presiding Justice Andres B. Reyes, Jr., Annex "J" of the Motion for Reconsideration, pp. 3-4.

transmittal letter to the Supreme Court shows her first in the order; and (2) the bar code numbers stamped on the appointment papers show that she has the lowest number.

I cannot agree.

Section 3, Chapter I of *Batas Pambansa Blg.* 129,[3] as amended by Republic Act No. 8246,[4] states:

Chapter 1

Section 3. *Organization*. — There is hereby created a Court of Appeals which shall consist of a Presiding Justice and sixty-eight (68) Associate Justices who shall be appointed by the President of the Philippines. The Presiding Justice shall be so designated in his appointment, and **the Associate Justices shall have precedence according to the *dates of their respective appointments*, or when the appointments of two or more of them shall bear the same date, according to the order in which their appointments were issued by the President.** Any member who is reappointed to the Court after rendering service in any other position in the government shall retain the precedence to which he was entitled under his original appointment, and his service in the court shall, for all intents and purposes, be considered as continuous and uninterrupted. (Emphasis supplied)

The highlighted portion of the above provision may be broken down into two parts: (1) when the appointments do not bear the same date and (2) when the appointments bear the same date. When the appointments do not bear the same date, precedence in seniority is based on the **dates of the respective appointments**. However, when the appointments bear the same date, precedence in seniority shall be based on the **order in which the appointments were issued by the President**. This is the clear language of Section 3, Chapter I of BP 129, as amended.

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[3] The Judiciary Reorganization Act of 1980.

[4] An Act Creating Additional Divisions in the Court of Appeals, Increasing the Number of Court of Appeals Justices from Fifty-One (51) to Sixty-Nine (69), Amending for the Purpose Batas Pambansa Bilang 129, As Amended, Otherwise Known as the Judiciary Reorganization Act of 1980, Appropriating Funds Therefor, and for Other Purposes, 3 December 1996.

BP 129, as amended, prevails over Section 1, Rule II of the 2009 Internal Rules of the Court of Appeals,[5] which ranks seniority based on "the order of appointments as officially transmitted to the Supreme Court." It is axiomatic that the Internal Rules of the CA cannot amend an existing law. At most, Section 1, Rule II of the 2009 Internal Rules of the CA applies only when the appointments bear the same date, in which case "the order of appointments as officially transmitted to the Supreme Court" is deemed "the order in which the appointments were issued by the President," as provided in Section 3, Chapter I of BP 129.

Applying the law to the present case, Justices Fernandez, Peralta, Jr., and Hernando, whose appointment papers all bore the same date of 16 February 2010, were correctly ranked in the chronological order in which their appointments were issued by the President. Justice Valenzuela's appointment paper, on the other hand, did not bear the same date, but was distinctly dated **later** — 24 February 2010. Under the same provision of BP 129, as amended, the date specified in Justice Valenzuela's appointment paper should determine her status in seniority.

In fact, the dates of appointment in the present case assume even greater importance. In fixing *in her own handwriting* the dates on the appointment papers of the four CA Justices, the President clearly intended some of the appointees to take precedence in seniority over the others. On the other hand, mechanically-stamped bar codes are meant only to authenticate the appointment papers and facilitate record keeping, and should not defeat the will of the appointing authority as signified by the specific dates fixed in the appointment papers. Neither should the transmittal letter to the Supreme Court, signed by Executive Secretary Leandro R. Mendoza, prevail over the dates of the appointment papers signed by the President.

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[5] Rule II

Rule of Precedence and Protocol

Section 1. Concept. — The Presiding Justice enjoys precedence over all the other members of the Court in all official functions. The Associate Justices shall have precedence according to the order of their appointments as officially transmitted to the Supreme Court.

It is a well-known fact that appointees to the judiciary do not necessarily accept their appointments immediately, whether by promptly assuming the judicial post or by taking the oath of office right away. Understandably, appointees often need to clear their desk first or wind up unfinished business from previous practice as is the case of judicial appointees who are plucked from the private sector. Thus, it may take a few days before the appointee is ready to assume the new judicial post or to take the required oath of office. In cases where judicial appointees come from far-flung provinces, acceptance by the appointees may take even longer as it could take awhile before they receive notice of their appointments.

For these reasons, the seniority of the appointees, in cases where the appointments do not bear the same date, cannot be made to depend on extraneous factors such as clerical skill or messengerial speed. Where the appointments do not bear the same date, it is the date specified in the appointment papers that must serve as the reckoning point in determining precedence in seniority. Otherwise, the crucial issue of seniority with all its legal import and far-reaching consequences will be left to the predisposition of clerks or messengers, undermining the express will of the appointing authority in fixing the dates in the appointment papers.

Thus, I concur that in determining seniority among appointees to the Court of Appeals whose appointments do not bear the same date, the date of appointment as stated in the appointment paper prevails over clerical matters like the numbering or sequencing of the bar code or the date of transmission of the appointment papers. This is regardless of when the appointments became complete with the acceptance of the appointment by the appointees. **The law**[6] **clearly specifies that for purposes of determining precedence in seniority in cases where the appointments do not bear the same date, it is the date of appointment that is the reckoning point.** The date of acceptance of the appointment by the appointee is of no consequence in

[6] Section 3, Chapter I of BP 129, as amended by RA 8246.

determining seniority because the date of acceptance depends on the will of the appointee over which the appointing power has no control. Of course, if the appointee does not accept the appointment, the issue of seniority will not arise as to such appointee.

Thus, the well-settled rule in our jurisprudence, that an appointment is a **process** that begins with the selection by the appointing power and ends with acceptance of the appointment by the appointee, ***stands***. As early as the 1949 case of *Lacson v. Romero*,[7] this Court laid down the rule that acceptance by the appointee is the last act needed to make an appointment complete. The Court reiterated this rule in the 1989 case of *Javier v. Reyes*.[8] In the 1996 case of *Garces v. Court of Appeals*,[9] this Court emphasized that acceptance by the appointee is indispensable to complete an appointment. The 1999 case of *Bermudez v. Executive Secretary*,[10] **cited in the *ponencia***, affirms this standing rule in our jurisdiction, to wit:

> The appointment is deemed complete once the last act required of the appointing authority has been complied with **and its acceptance thereafter by the appointee in order to render it effective**. (Emphasis supplied)

In sum, in appointments to collegial courts where the appointments do not bear the same date, precedence in seniority is determined by the dates of the respective appointments. **The law**[11] **expressly states so**.

Accordingly, I vote to **DENY** the motion for reconsideration.

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[7] 84 Phil. 740 (1949).

[8] 252 Phil. 369 (1989).

[9] 328 Phil. 403 (1996).

[10] 370 Phil. 769 (1999).

[11] Section 3, Chapter I of BP 129, as amended by RA 8246.

EN BANC

[A.M. No. 2005-21-SC. September 28, 2010]

RE: FAILURE OF VARIOUS EMPLOYEES TO REGISTER THEIR TIME OF ARRIVAL AND/OR DEPARTURE FROM OFFICE IN THE CHRONOLOG MACHINE

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; ADMINISTRATIVE CIRCULAR NO. 36-2001; REQUIRES ALL EMPLOYEES TO REGISTER THEIR DAILY ATTENDANCE IN THE CHRONOLOG TIME RECORDER MACHINE (CTRM) AND IN THE LOGBOOK OF THEIR RESPECTIVE OFFICES; VIOLATED IN CASE AT BAR.— Administrative Circular No. 36-2001 requires all employees (whether regular, coterminous or casual) to register their daily attendance, in the CTRM and in the logbook of their respective offices. xxx Considering the various justifications proffered by respondent employees for failure to register their time of arrival and departure in the CTRM, the Court finds no error in the recommendation of the OAS finding them guilty of Violation of Reasonable Office Rules and Regulations, more specifically Administrative Circular No. 36-2001. As stated by the OAS, "rules and regulations are [issued] to attain harmony, smooth operation, maximize efficiency and productivity, with the ultimate objective of realizing the functions of particular offices and agencies of the government." Thus, any breach of such rules and regulations cannot be countenanced.

2. ID.; ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; VIOLATION OF REASONABLE RULES AND REGULATIONS IS A LIGHT OFFENSE; PENALTY FOR THE FIRST OFFENSE IS REPRIMAND.— Under the Uniform Rules on Administrative Cases in the Civil Service, Violation of Reasonable Rules and Regulations is a light offense punishable with the penalty of Reprimand for the first offense. Adopting the recommendation of the OAS, we find that a stern warning against a repetition of the same or similar infraction is proper since this is the first violation of respondent employees, except for Azurin.

3. ID.; ID.; ID.; ID.; MAINTAINING AND USING TWO (2) ID CARDS, NOT A VIOLATION OF REASONABLE OFFICE RULES AND REGULATIONS; EXPLAINED.— The OAS recommended that Sevilla be sternly warned for Violation of Reasonable Office Rules and Regulations "for maintaining and using two (2) ID cards within the period from January to June 2005." We disagree with the recommendation of the OAS considering that the OAS failed to cite any specific office rule or regulation which Sevilla allegedly violated. It must be pointed out that Sevilla was charged with Violation of Reasonable Office Rules and Regulations for failure to register in the CTRM. Since the OAS confirmed that she indeed swiped her ID card, albeit the old one, on those dates specified in the Memorandum, Sevilla cannot be found guilty of failing to register in the CTRM. In fact, the OAS even found, upon verification with the MISO, that Sevilla's DTRs "reflected regular attendance which also showed her being punctual." Nevertheless, Sevilla must immediately cease using her old ID card, and instead use her new ID card exclusively in registering in the CTRM to avoid any confusion regarding her attendance and time of arrival and departure in the office.

4. ID.; ID.; ID.; ID.; DISHONESTY; ACT OF DELIBERATELY NOT REGISTERING IN THE CTRM TO HIDE ONE'S HABITUAL TARDINESS, A CASE OF; DISHONESTY, DEFINED.— In Azurin's case, which is essentially identical to the case of *Esmerio and Ting*, there is substantial evidence that he intentionally did not register in the CTRM to conceal his tardiness to avoid dismissal from service. First, Azurin did not deny that he failed to swipe his ID in the CTRM on the dates mentioned in the Memorandum. Second, the correctness of the entries in the RATs he presented is doubtful since the times of his arrival were not entered in accordance with the chronological order of time. Third, there is no proof that the CTRM malfunctioned on those dates specified in the Memorandum. Azurin's act of deliberately not registering in the CTRM to hide his habitual tardiness for the third time, which is punishable by dismissal, constitutes dishonesty. Dishonesty refers to a person's "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."

By repeatedly making it appear that he has consistently rendered a full day's service, when he had actually been tardy, Azurin defrauded the public and betrayed the trust reposed in him as an employee of the highest Court. Azurin's dishonesty definitely falls short of the strict standards required of every court employee, that is, to be an example of integrity, uprightness and honesty. Once again, we remind every Court employee that their conduct should, at all times, be geared towards maintaining the prestige and integrity of the Court, for the image of this Court is mirrored in the conduct, not only of the Justices, but of every man and woman working thereat.

5. ID.; ID.; ID.; CIVIL SERVICE MEMORANDUM CIRCULAR NO. 19-99; CLASSIFICATION OF OFFENSES; GRAVE OFFENSES; DISHONESTY; WARRANTS THE HARSHEST PENALTY OF DISMISSAL FROM SERVICE EVEN FOR THE FIRST OFFENSE.— Rule IV of CSC Memorandum Circular No. 19-99 provides: Section 52. *Classification of Offenses.* — Administrative offenses with corresponding penalties are classified into grave, less grave, or light, depending on their gravity or depravity and effects on the government service. A. The following are grave offenses with their corresponding penalties: 1. Dishonesty 1st offense – Dismissal Hence, dishonesty, being a grave offense, warrants the harshest penalty of dismissal from service, even upon the commission of only the first offense.

6. ID.; ID.; ID.; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GRANTS THE DISCIPLINING AUTHORITY THE DISCRETION TO CONSIDER MITIGATING CIRCUMSTANCES IN THE IMPOSITION OF PROPER PENALTY.— Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. As recommended by Edwin B. Andrada, Officer-in-Charge, OAS, and consistent with jurisprudence, we consider as mitigating circumstances Azurin's length of service in the Court, pleas for compassion, and firm resolve to be more cautious in the performance of his duties and responsibilities. Accordingly, we impose upon Azurin the penalty of suspension of six (6) months with a warning that a repetition of the same or similar act in the future shall be dealt with more severely.

D E C I S I O N

CARPIO, *J.*:

The Facts

This administrative case arose from a Report of the Leave Division of the Supreme Court to the Complaints and Investigation Division of the Office of Administrative Services (OAS).[1] The Report referred to the failure of various Supreme Court employees to register their time of arrival to and/or departure from office in the Chronolog Time Recorder Machine (CTRM) for the first semester of 2005. Charged were the following:

1. Noemi B. Adriano, Development Management Officer V, Program Management Office (PMO), for various dates from January to June

2. Dennis Russell D. Baldago, Chief Judicial Staff Officer, PMO, for various dates from January to June

3. Edilberto A. Davis, Director IV, PMO, for various dates from January to June

4. Atty. Catherine Joy T. Comandante, Court Attorney V, PMO, for various dates in February and from April to June

5. Jonathan Riche G. Mozar, Bookkeeper I, PMO, for various dates from January to June

6. Mariles M. Sales, Executive Assistant IV, PMO, for various dates from January to June

7. Virginia B. Ciudadano, Court Stenographer IV, Court Management Office, Office of the Court Administrator (OCA) for various dates from March to June

8. Pia Claire C. Bernal, Clerk IV, Legal Office, OCA for various dates in January and from March to June

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[1] Dated 8 July 2005.

9. Teresita M. Aniñon, Human Resource Management Officer I, Leave Division, OAS, OCA, for various dates from January to March

10. Honradez M. Sanchez, Human Resource Management Assistant, Leave Division, OAS, OCA, for various dates in the months of February, March, and May

11. Samuel R. Ruñez, Jr., Cashier III, Checks Disbursement Division, FMO, OCA, for various dates from January to March and in the month of May

12. Arturo G. Ramos, Engineering Aide A – Casual, Committee on Hall of Justice, for various dates from January to March, and from May to June

13. Zosimo D. Labro, Administrative Officer II, Property Division, OAS, OCA, for various dates from March to June

14. Leonarda Jazmin M. Sevilla, Clerk IV, Legal Office, OCA, for various dates from February to June

15. Ariel Conrad A. Azurin, Messenger, Finance Division, FMO, OCA, for various dates from January to June

In its Memorandum dated 2 September 2005,[2] the OAS directed respondent employees to explain why no administrative disciplinary action should be taken against them for their infraction. In compliance with the directive, respondent employees submitted the following comments/explanations:

1. Ma. Noemi B. Adriano offered the following reasons: (1) domestic and office concerns, (2) long travel time, (3) forgetfulness, and (4) malfunctioning CTRM. She pointed out her diligence in logging her attendance in the Daily Report of Absences and Tardiness (RAT) of their office.

2. Dennis Russell D. Baldago claimed that on several occasions he had meetings and activities outside the Court. In other instances, he admitted his neglect. He also faulted his ID

[2] Addressed to then Chief Justice Hilario G. Davide, Jr. Signed by Deputy Clerk of Court and Chief Administrative Officer Eden T. Candelaria.

for his failure to register in the CTRM and claimed consulting with the Management Information System Office (MISO) for the replacement of his ID.

3. Edilberto A. Davis asserted he never failed to register in the CTRM and in their office logbook. He admitted, however, that there were instances when he forgot his ID at home or when he forgot to register due to office meetings. He wondered how it appeared that he had not registered in the CTRM on the other dates stated in the Memorandum.

4. Atty. Catherine T. Comandante declared she was on official business on several occasions while on a few instances, she inadvertently failed to register in the CTRM.

5. Jonathan Riche G. Mozar reasoned that as Bookkeeper I in the PMO, there were times that he was tasked to perform other jobs requiring him to go out of the office. For this reason, he found it inconvenient and inappropriate to still drop by the office just to register in the CTRM.

6. Mariles M. Sales claimed that the CTRM malfunction on certain dates, while on the other dates specified in the Memorandum, she either forgot to bring her ID or was rushing home.

7. Virginia B. Ciudadano stated that she had religiously swiped her ID upon her arrival to and departure from office. However, for the month of March 2005, she admitted failing to register in the CTRM because she could not locate her ID. She did not bother to use the Bundy Clock Machine because she thought that her signature in their office logbook is sufficient to consider her attendance.

8. Pia Claire C. Bernal claimed that she regularly registered her daily attendance both in the CTRM and in their office logbook and was surprised to receive the Memorandum. She believed her ID was already defective, thus she requested for a new ID. On 26 April 2005, she did not register in the CTRM due to an official business outside the Court.

9. Teresita M. Aniñon admitted her absence on 14 and half day work on 19 January 2005, which were both approved by her superior. However, such leave application did not reach the Leave Division. On 18 March 2005, she claimed she swiped her ID but it appeared that the CTRM did not register her attendance, leading her to conclude that her ID was already defective. On the other dates, she forgot her ID at home. Nonetheless, she claimed that she never failed to register in their office logbook.

10. Honradez M. Sanchez blamed his failure to swipe his ID on his forgetfulness to bring the same. He claimed that on the dates mentioned in the Memorandum, he visited his parents' house in Fairview and still had to go home in Laguna. On 11 and 14 February, he alleged his ID was misplaced and was only found later.

11. Mr. Samuel R. Ruñez, Jr. claimed that he never failed to register during the period covered in the Memorandum. He maintained that his Monthly and Daily RAT for the months of January, February, March and April 2005 showed his attendance for the period. He faulted his ID for not being read by the CTRM, and averred that he already applied for a new ID.

12. Mr. Arturo G. Ramos alleged he regularly swiped his ID card in the CTRM. He attached copies of the RAT of their office for the months of January, February, March, May and June to prove his attendance on the questioned dates. He attributed his failure to register in the CTRM either to the malfunctioning CTRM or defective ID. He intended to coordinate with the MISO to remedy this and also request for a new ID.

13. Zosimo D. Labro, Jr. stated that his failure was due to his defective three-year old ID, and thus, he would apply for a new ID.

14. Ariel Conrad A. Azurin claimed that he was surprised to receive the Memorandum as he always made sure to hear a confirmation tone whenever he registered in the CTRM. He presented copies of the RAT of his office to support his attendance on the dates mentioned in the Memorandum. He surmised that

his failure to register in the CTRM was due to his worn out ID. He also presented an official receipt to prove his request for a new ID.

15. Leonarda Jazmin M. Sevilla denied that she failed to register in the CTRM. However, she claimed that she continued to use her old ID despite the fact that she had already secured a new one. She submitted copies of the RAT of her Office to prove her attendance.

The Recommendation of the OAS

The OAS classified the reasons proffered in the comments as (1) personal, including household or domestic needs, workload, nature of office, distant travel, traffic, and forgetfulness, (2) malfunctioning CTRM, (3) misplaced, worn out, or defective ID cards, or (4) official business.

In ruling against respondent employees, the OAS cited the Court's ruling in *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec. I and Angelita C. Esmerio, Clerk III, Off. Clerk of Court*,[3] an administrative case for dishonesty filed against two employees of this Court, where the Court held that "domestic concerns and other personal reasons cannot justify nor exonerate one's culpability for committing violation of such offense."

With respect to Leonarda Jazmin M. Sevilla, the OAS found her guilty of violation of reasonable office rules and regulations for maintaining two ID cards. Sevilla "used her old ID alternately with her new ID, that was why there were no entries [when] the old ID was used."

Insofar as Ariel Conrad A. Azurin is concerned, the OAS found that his omission to register in the CTRM constitutes dishonesty. According to the OAS, Azurin "deliberately did not swipe on the aforementioned dates and made it appear on the said dates that he reported on time to escape administrative liability for habitual tardiness for the 3rd time which is already

[3] 502 Phil. 264 (2005).

punishable with the penalty of dismissal."

The OAS recommended that respondent employees, except Azurin, to be sternly warned for Violation of Reasonable Office Rules and Regulations, to wit:

> WHEREFORE, in view of the foregoing, this Office respectfully recommends the following:
>
> 1. Finding Ms. Noemi B. Adriano, Mr. Dennis Russell D. Baldago, Mr. Edilberto A. Davis, Atty. Catherine Joy T. Comandante, Mr. Jonathan Riche G. Mozar, Ms. Mariles M. Sales, Ms. Virginia B. Ciudadano, Ms. Pia Claire C. Bernal, Ms. Teresita M. Aniñon, Mr. Honradez M. Sanchez, Mr. Samuel R. Ruñez, Jr., Mr. Arturo G. Ramos, Mr. Zosimo D. Labro, GUILTY of Violation of Reasonable Office Rules and Regulations and taking into consideration the mitigating circumstance that this is their first violation, that they be STERNLY WARNED that a repetition of similar acts in the future shall be dealt with severely. For the officials and employees of the PMO who attend meetings and/or seminars outside the Court's premises, appropriate office orders should be submitted to the Leave Division, this Office for proper recording in their office attendance files.
>
> 2. Finding Ms. Leonarda Jazmin M. Sevilla, GUILTY of Violating Reasonable Office Rules and Regulations, not for her failure to swipe her ID card in the CTRM but for maintaining and using two (2) ID cards within the period from January to June 2005, that she be (a) STERNLY WARNED that a repetition of similar acts in the future shall be dealt with severely; and (b) directed to immediately surrender her old ID card to this Office; and
>
> 3. Finding the acts of Mr. Ariel Conrad A. Azurin as constituting Dishonesty, that he be directed by the Court to explain why he should not be held administratively liable for Dishonesty.[4]

The Court's Ruling

The recommendations of the OAS are well taken, except as to Sevilla who is not guilty of Violation of Reasonable Office Rules and Regulations.

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[4] Memorandum dated 2 September 2005, pp. 12-13.

I. Respondent employees are guilty of Violation of Reasonable Office Rules and Regulations

Administrative Circular No. 36-2001[5] requires all employees (whether regular, coterminous or casual) to register their daily attendance, in the CTRM and in the logbook of their respective offices.

In *Re: Failure of Jose Dante E. Guerrero to Register his Time In and Out in the Chronolog Time Recorder Machine on Several Dates*,[6] the Court emphasized the importance of attendance registration via CTRM, to wit:

> The CTRM registration is not being imposed as a tedious and empty requirement. The registration of attendance in office by public employees is an attestation to the taxpaying public of their basic entitlement to a portion of the public funds. Verily, the registration requirement stands as the first defense to any attempt to defraud the people of the services they help sustain. This requirement finds its underpinnings in the constitutional mandate that a public office is a public trust. Inherent in this mandate is the observance and efficient use of every moment of the prescribed office hours to serve the public.[7]

In that case, the Court found Guerrero's explanations for his failure to register his time of arrival and departure in the CTRM, namely, a defective ID and a malfunctioning CTRM, unbelievable. The Court affirmed Atty. Eden T. Candelaria's finding that "Guerrero deliberately avoided registering via the CTRM to make it appear that he had reported on time," thereby avoiding the ultimate penalty of dismissal for his habitual tardiness.

In *Re: Supreme Court Employees Incurring Habitual Tardiness in the 2nd Semester of 2005*,[8] which involved a charge of habitual

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[5] Issued on 13 July 2001 and took effect on 1 August 2001.

[6] A.M. No. 2005-07-SC, 19 April 2006, 487 SCRA 352.

[7] *Id.* at 361.

[8] A.M. No. 2006-11-SC, 13 September 2006, 501 SCRA 638.

tardiness where the justifications offered by respondent employees therein were similar to the reasons given in this case, the Court found the respondent employees' explanations untenable. The Court stated:

> Except for the claims of respondents Davis, Labro, Jr., Adriano and Benologa, all the reasons given by the other respondents for their tardiness fall under the following categories: illness, moral obligation to family and relatives, performance of household chores, traffic and health or physical condition.
>
> These justifications are neither novel nor persuasive and hardly evokes sympathy. Moral obligations, performance of household chores, traffic problems, health conditions, domestic and financial concerns are not sufficient reasons to excuse habitual tardiness. If at all, they would mitigate, but not exempt them from the infraction.[9]

Considering the various justifications proffered by respondent employees for failure to register their time of arrival and departure in the CTRM, the Court finds no error in the recommendation of the OAS finding them guilty of Violation of Reasonable Office Rules and Regulations, more specifically Administrative Circular No. 36-2001. As stated by the OAS, "rules and regulations are [issued] to attain harmony, smooth operation, maximize efficiency and productivity, with the ultimate objective of realizing the functions of particular offices and agencies of the government."[10] Thus, any breach of such rules and regulations cannot be countenanced.

Under the Uniform Rules on Administrative Cases in the Civil Service, Violation of Reasonable Rules and Regulations is a light offense punishable with the penalty of Reprimand for the first offense. Adopting the recommendation of the OAS, we find that a stern warning against a repetition of the same or similar infraction is proper since this is the first violation of respondent employees, except for Azurin,

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[9] *Id.* at 645-646.

[10] Memorandum dated 2 September 2005, p. 12.

II. Sevilla is not guilty of Violation of ReasonableOffice Rules and Regulation

Insofar as Sevilla is concerned, the OAS stated:

> On the other hand, we also treat the case of Ms. Sevilla differently from the others. Ms. Sevilla used her old ID alternately with her new ID that was why there were no entries if the old ID was used. Her DTRS, particularly for the months of May and June were completely without entries while the rest lacked entries on various dates as reflected on the Memorandum of this Office. Based on her own admission, she has two (2) IDs. Nevertheless, one was allegedly lost so she requested for a replacement. After a while, the alleged lost ID was found but she never presented nor informed this Office about it.
>
> **This Office verified with the MISO whether her DTRs on the reported dates she allegedly failed to swipe have generated data thereon. Consistent with her claim, it was confirmed that her DTRs reflected regular attendance which also showed her being punctual.**[11] (Emphasis supplied)

The OAS recommended that Sevilla be sternly warned for Violation of Reasonable Office Rules and Regulations "for maintaining and using two (2) ID cards within the period from January to June 2005." We disagree with the recommendation of the OAS considering that the OAS failed to cite any specific office rule or regulation which Sevilla allegedly violated. It must be pointed out that Sevilla was charged with Violation of Reasonable Office Rules and Regulations for failure to register in the CTRM. Since the OAS confirmed that she indeed swiped her ID card, albeit the old one, on those dates specified in the Memorandum, Sevilla cannot be found guilty of failing to register in the CTRM. In fact, the OAS even found, upon verification with the MISO, that Sevilla's DTRs "reflected regular attendance which also showed her being punctual." Nevertheless, Sevilla must immediately cease using her old ID card, and instead use her new ID card exclusively in registering in the CTRM to avoid

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[11] *Id*.

any confusion regarding her attendance and time of arrival and departure in the office.

III. Azurin is guilty of dishonesty

In Azurin's case, the OAS found that his omission to register in the CTRM constitutes dishonesty. The OAS stated:

> x x x Azurin deliberately did not swipe on the aforementioned dates and made it appear on the said dates that he reported on time to escape administrative liability for habitual tardiness for the 3rd time which is already punishable with the penalty of dismissal. The RATs he submitted x x x have raised doubts on the correctness of his entries thereon. It is noted that almost all his time-ins were not entered in accordance with the chronological order of time reflective of correct and true arrival in office. Logically, it can be deduced that his failure to swipe was to cover-up the actual time of his arrival to his workstation.[12]

The records reveal that Azurin has previously been suspended twice for habitual tardiness. In 2001, Azurin was suspended for one month and then for three months for having been found habitually tardy for 1999 and 2000, and for the first semester of 2001.

In his Comment, Azurin did not specifically deny that he failed to swipe his ID in the CTRM. Instead, he blamed the CTRM for not registering his entries thereon, and added that such problem might also be caused by his ID. In *Esmerio and Ting*,[13] where the employees similarly blamed the CTRM and their ID cards for their infraction, the Court disbelieved such justification, thus:

> More importantly, the respondents have asserted that the machines and their bar coded IDs are partly to blame for their failure to swipe their ID cards. This assertion, however, is belied by the report of Atty. Ivan Uy, Chief of the Supreme Court Management Information Systems Office. In his report, Atty. Uy avowed that, contrary to the

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[12] *Id.* at 11.

[13] *Supra* note 3.

claims of the respondents, the machines were working properly during the date and time of the incidents subject of the cases at bar. His report was backed up by verifiable evidence as well as the expertise of the division. Machines, unlike humans have no self-interest to protect. Hence, the data collected from them deserve great weight.

Besides, if, as claimed by the respondents, the Chronolog Time Recorder Machine truly refused to record their IDs' bar codes, repeatedly, then they should have had them replaced at the soonest possible time or at the very least, complained about them to the MISO or, again, had their supervisor countersign their logbook entries. Respondents did nothing to rectify the matter until they were made to explain their delinquency.

The respondents made use of the alleged failure of their ID cards and the Chronolog Time Recorder machines as their proverbial scapegoat. Instead of being their salvation, said objects only proved the respondents' propensity or disposition to lie.

In fine, respondents' conducts clearly show lack of forthrightness and straightforwardness in their dealings with the Court amounting to dishonesty. x x x.[14]

In Azurin's case, which is essentially identical to the case of *Esmerio and Ting*,[15] there is substantial evidence that he intentionally did not register in the CTRM to conceal his tardiness to avoid dismissal from service. First, Azurin did not deny that he failed to swipe his ID in the CTRM on the dates mentioned in the Memorandum. Second, the correctness of the entries in the RATs he presented is doubtful since the times of his arrival were not entered in accordance with the chronological order of time. Third, there is no proof that the CTRM malfunctioned on those dates specified in the Memorandum.

Azurin's act of deliberately not registering in the CTRM to hide his habitual tardiness for the third time, which is punishable by dismissal, constitutes dishonesty. Dishonesty refers to a person's "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or

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[14] *Supra* note 3 at 276.

[15] *Supra* note 3.

integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[16] By repeatedly making it appear that he has consistently rendered a full day's service, when he had actually been tardy, Azurin defrauded the public and betrayed the trust reposed in him as an employee of the highest Court. Azurin's dishonesty definitely falls short of the strict standards required of every court employee, that is, to be an example of integrity, uprightness and honesty.[17] Once again, we remind every Court employee that their conduct should, at all times, be geared towards maintaining the prestige and integrity of the Court,[18] for the image of this Court is mirrored in the conduct, not only of the Justices, but of every man and woman working thereat.[19]

Rule IV of CSC Memorandum Circular No. 19-99 provides:

Section 52. *Classification of Offenses.* — Administrative offenses with corresponding penalties are classified into grave, less grave, or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

1. Dishonesty

1st offense – Dismissal

Hence, dishonesty, being a grave offense, warrants the harshest penalty of dismissal from service, even upon the commission of only the first offense.

However, Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service,[20] grants the

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[16] *Supra* note 3 at 276.

[17] *Id*.

[18] *Punzalan-Santos v. Arquiza*, 314 Phil. 460 (1995), cited in *Guanco v. Fuentas, Jr.*, A.M. No. P-98-1268, 3 July 1998.

[19] *Supra* note 3 at 276.

[20] CSC Memorandum Circular No. 19-99, 14 September 1999.

disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. As recommended by Edwin B. Andrada, Officer-in-Charge, OAS,[21] and consistent with jurisprudence,[22] we consider as mitigating circumstances Azurin's length of service in the Court, pleas for compassion, and firm resolve to be more cautious in the performance of his duties and responsibilities. Accordingly, we impose upon Azurin the penalty of suspension of six (6) months with a warning that a repetition of the same or similar act in the future shall be dealt with more severely.

WHEREFORE, we find Noemi B. Adriano, Dennis Russell D. Baldago, Edilberto A. Davis, Atty. Catherine Joy T. Comandante, Jonathan Riche G. Mozar, Mariles M. Sales, Virginia B. Ciudadano, Pia Claire C. Bernal, Teresita M. Aniñon, Honradez M. Sanchez, Samuel R. Ruñez, Jr., Arturo G. Ramos, Zosimo D. Labro, Jr., *GUILTY* of Violation of Reasonable Office Rules and Regulations and *STERNLY WARN* them that a repetition of similar acts in the future shall be dealt with more severely.

We find Ariel Conrad A. Azurin *GUILTY* of Dishonesty and *SUSPEND* him for six (6) months without pay, effective immediately, with a *STERN WARNING* that a repetition of the same or similar act in the future shall be dealt with more severely.

We *ABSOLVE* Leonarda Jazmin M. Sevilla from the charge of Violation of Reasonable Office Rules and Regulations.

SO ORDERED.

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[21] In the Memorandum, dated 15 February 2006, addressed to then Chief Justice Artemio V. Panganiban.

[22] *Re: Failure of Jose Dante E. Guerrero to Register his Time In and Out in the Chronolog Time Recorder Machine on Several Dates*, *supra* note 6, citing *Concerned Employee v. Valentin*, 498 Phil. 347 (2005); *Dipolog v. Montealto*, 486 Phil. 66 (2004); *Re: Alleged Tampering of the Daily Time Records (DTR) of Sherry B. Cervantes, Court Stenographer III, Br. 18, RTC, Manila*, Adm. Matter No. 03-8-463-RTC, 20 May 2004, 428 SCRA 572; *Office of the Court Administrator v. Sirios*, 457 Phil. 42 (2003); *Reyes-Domingo v. Morales*, 396 Phil. 150 (2000).

Corona, C.J., 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. P-07-2292. September 28, 2010]
(Formerly A.M. No. 06-6-206-MCTC)

RE: COMPLAINT OF THE CIVIL SERVICE COMMISSION, CORDILLERA ADMINISTRATIVE REGION, BAGUIO CITY against RITA S. CHULYAO, CLERK OF COURT, MUNICIPAL CIRCUIT TRIAL COURT-BARLIG, MOUNTAIN PROVINCE

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY; DEFINED.— Dishonesty is defined as "intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion." It is also understood to imply a "disposition to lie, cheat, deceive, or defraud; unworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; RESPONDENT'S PROFESSION OF GOOD FAITH AND INADVERTENCE ARE TOO INCREDIBLE TO BE GIVEN WEIGHT IN CASE AT BAR.— No amount of good faith can be attributed to Chulyao. Good faith necessitates honesty of intention, free from any knowledge of circumstances that ought to have prompted him to undertake

an inquiry. Chulyao admitted that she discovered after a week or two, from the day of examination, that she had given the picture of her sister to the proctor on July 31, 1988 and yet she did not immediately report and correct said error. When the CSC called her twice to appear before the investigation being conducted regarding the incident, Chulyao failed to appear. An innocent person caught in a like situation would more likely immediately profess his innocence rather than evade an investigation which could shed light on the controversy. A truly innocent person would normally grasp the first available opportunity to defend himself and assert his innocence. Thus, Chulyao's protestation of good faith and inadvertence are too incredible to be given weight. To our mind, Chulyao acted with malicious intent to perpetrate a fraud.

3. ID.; ID.; ADMISSIBILITY; DULY ACCOMPLISHED FORM OF THE CIVIL SERVICE IS AN OFFICIAL DOCUMENT OF THE COMMISSION CONSIDERED IN THE SAME CATEGORY AS THAT OF A PUBLIC DOCUMENT AND ADMISSIBLE IN EVIDENCE WITHOUT NEED OF FURTHER PROOF.— [I]t has been a settled rule in this jurisdiction that the duly accomplished form of the Civil Service is an official document of the Commission, which, by its very nature is considered in the same category as that of a public document, admissible in evidence without need of further proof. As an official document, the contents/entries therein made in the course of official duty are *prima facie* evidence of the facts stated therein.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; EXECUTIVE ORDER NO. 292; OMNIBUS RULES IMPLEMENTING BOOK V THEREOF; GRAVE OFFENSES; DISHONESTY; PUNISHABLE BY DISMISSAL EVEN FOR THE FIRST OFFENSE.— The Court cannot turn a blind eye to what are clearly transgressions of the law. Dishonesty and falsification are malevolent acts that have no place in the Judiciary. Under Section 52, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, dishonesty is considered a grave offense punishable by dismissal even for the first offense.

APPEARANCES OF COUNSEL

AC Estrada and Partners Law Office for Rita S. Chulyao.

D E C I S I O N

PER CURIAM:

Before us is an administrative complaint against Rita S. Chulyao, Clerk of Court II of the Municipal Circuit Trial Court (MCTC) of Barlig, Mountain Province, for Dishonesty.

The facts, as culled from the records, are as follows:

On December 9, 2004, the Civil Service Commission (CSC)-Examination Division received an Anonymous Complaint, which alleged an examination irregularity involving Rita S. Chulyao (Chulyao), Clerk of Court II, MCTC of Barlig, Mountain Province. The complaint averred that Chulyao employed her sister, Raquel S. Pangowon (Pangowon), a school teacher of Barlig National High School, to take for and in her behalf the July 31, 1988 Career Service Professional Examination (CSPE) conducted in Baguio City.

Upon verification from the examination records of the CSC-Region 1 and CSC-Integrated Records Management Office, it appeared that one Rita S. Chulyao actually took the CSPE on July 31, 1988 in Baguio City.

Upon further verification from the Office of the Court Administrator (OCA), Supreme Court, it revealed that per employment records of Chulyao, she passed the CSPE held in Baguio City on July 31, 1988 with a rating of 72%.

Thus, for purposes of comparison, the employment records of Pangowon were requested from the CSC-Cordillera Administrative Region (CSC-CAR), Mountain Province Field Office. From Pangowon's personal data sheets, it was found that the picture attached therein was that of the same person who took the CSPE on July 31, 1988 based on the picture attached in the picture seat plan. These gave the impression

that the actual person who took the CSPE was Raquel Pangowon instead of the supposed examinee Rita Chulyao.

Subsequently, the CSC directed both Chulyao and Pangowon to submit their Comments on the complaint.

Chulyao moved for the summary dismissal of the complaint and manifested that the same was filed by scrupulous people motivated by revenge and envy.

In an Order dated February 15, 2005, Chulyao and Pangowon were directed to appear before the CSC-CAR for preliminary investigation on March 3, 2005. Both respondents failed to appear.

Again, in an Order dated July 21, 2005, Pangowon was directed to appear before the CSC-CAR for preliminary investigation. By special appearance, Pangowon appeared for preliminary investigation on September 6, 2005.

Chulyao, on the other hand, was again directed to appear for a preliminary investigation on August 29, 2005. However, despite notice, Chulyao failed to show up.

Subsequently, the CSC-CAR issued a formal charge against Pangowon for Dishonesty, Falsification of Official Documents and Conduct Prejudicial to the Best Interest of the Service for applying and taking the July 31, 1988 CSPE for and in behalf of her sister, Rita S. Chulyao.[1]

However, the CSC-CAR, in Decision No. CAR-06-057DC, dated May 4, 2006, the complaint against Chulyao was dismissed for lack of jurisdiction since the latter is a court employee.[2]

On June 14, 2006, the Decision of the CSC-CAR, dated May 4, 2006, was forwarded to the OCA for proper action.

On June 23, 2006, the OCA directed Chulyao to submit her Comment on the CSC-CAR Decision against her.[3]

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

[2] *Id.* at 2-6.

[3] *Id.* at 28.

In her Comment[4] dated July 14, 2006, Chulyao denied anew the allegations contained in the CSC Decision. She denied that she committed any examination irregularity in the CSPE conducted in Baguio City on July 31, 1988. She narrated that the week before she went to Baguio City for the examination, her sister, Pangowon, gave her certain photo negatives for developing. On July 30, 1988, Chulyao narrated that she and her townmates who are taking the CSC examinations arrived in Baguio City late in the afternoon. Since she was not familiar with the place, she asked her sister-in-law to go to the photo studio to have her photo negative, as well as that of her sister's, developed. Her sister-in-law told her that the photos will be claimed the following day.

In the early morning of July 31, 1988, she and her sister-in-law went to the photo studio to claim the photos, but the studio was still closed. Chulyao claimed that they were able to redeem the photos only after 8:00 a.m. and she was already late for the examination. She said that because she was already late, the proctor assisted her and asked for her identification (I.D.) picture for the seat plan. Chulyao further claimed that she took the I.D. picture from the small envelope and gave it to the proctor. Later, after a week or two, Chulyao alleged that she received a note from her sister inquiring about the photos she asked her to have developed. Chulyao claimed that she counted her I.D. pictures and there were six (6) copies, while the number of copies her sister had was only five instead of six. She said that she was alarmed about what happened, but she never had the courage to report the same to the CSC.[5]

On December 6, 2006, the OCA recommended to this Court the re-docketing of the complaint against Chulyao as a regular administrative matter. It also found Chulyao guilty of dishonesty, thus, recommended that Chulyao be dismissed from service.[6]

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[4] *Id.* at 31-32.

[5] *Rollo*, pp. 3-4.

[6] *Id.* at 61-64.

On January 30, 2007, the Court resolved to re-docket the subject complaint as A.M. No. P-07-2292 (*Civil Service Commission, C.A.R., Baguio City v. Rita S. Chulyao, Clerk of Court II, Municipal Circuit Trial Court, Barlig, Mountain Province)* and further required Chulyao to file her Comment thereon.[7]

In her Comment[8] dated March 27, 2007, Chulyao, as in her previous Comment, reiterated that the irregularity were merely due to inadvertence when she submitted her sister's photo instead of hers to the proctor during the CSPE. She claimed to be unaware that the photo she gave was that of her sister's.

Chulyao refuted the allegation that it was her sister, Pangowon, who took the examination for and in her behalf on July 31, 1988 by reasoning that her sister was in Kadaclan, Barlig, Mountain Province, as it was planting season at that time in their ricefield, and she was also working there as a teacher. She claimed that they are look-alikes and that they have the same facial features which she insinuated where the confusion started. She submitted the Affidavit of one Diosdado F. Foyagan,[9] her seatmate at the time of the examination, who attested that he saw Chulyao inside the examination room on July 31, 1988. Chulyao also submitted a document showing that her sister was never absent in her class during said date, thus, she claimed that it was impossible for her sister to be in Baguio City, since it will take two to three days to travel from Barlig to Baguio City and vice- versa. Likewise, Chulyao submitted the Personal Data Sheet of Pangowon to prove that she never took the Civil Service Examination on July 31, 1988.

On June 17, 2008, the Court referred the instant matter to the OCA for evaluation, report and recommendation.

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[7] *Id.* at 65.

[8] *Id.* at 66-72.

[9] *Id.* at 75.

Meanwhile, on July 7, 2008, the CSC, in Resolution No. 081285,[10] affirmed the dismissal of Raquel S. Pangowon from service for Dishonesty, Falsification of Official Documents and Conduct Prejudicial to the Best Interest of the Service.

In compliance, on July 22, 2009, in a Memorandum to Chief Justice Reynato S. Puno, the OCA recommended that Chulyao be dismissed from service having found to be guilty of Dishonesty.

In its Report, the OCA, adopting the CSC findings, noted that indeed the photo appearing on the picture seat plan over the name and signature of Chulyao was that of her sister, Pangowon. Chulyao even categorically admitted this fact, but denied it was intentional. Likewise, it also found substantial dissimilarity between the signature appearing in Chulyao's personal data sheet and the signature appearing on the picture seat plan. The OCA noted that while Chulyao insisted that the name and signature appearing below the alleged photo of Raquel Pangowon was hers and not of Raquel Pangowon, she, however, failed to present any evidence to prove that the signature appearing on the picture seat plan was really her own. Thus, the OCA concluded that the unexplained discrepancy which is clear to the naked eye is proof enough that indeed another person took the examination for and in behalf of Chulyao.

The OCA gave no credence to the documents submitted by Chulyao to prove that her sister was never absent from her classes; thus, she cannot be the one who took the examination. The document presented was merely Pangowon's service record which does not contain any specific log of Pangowon's daily time-in and time-out. The document, therefore, cannot prove that Pangowon was not in Baguio City on July 31, 1988. Likewise, the Affidavit of Foyagan was given scant consideration, since the affidavit was found to be lacking the requisite community tax certificate number and its place and date of issue. Hence, the identity of Foyagan was questionable.

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[10] *Id.* at 97-106.

Over-all, the OCA found Chulyao's defense as merely an alibi unsubstantiated by clear and convincing evidence of non-culpability.

We adopt the recommendation of the OCA.

Dishonesty is defined as "intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion." It is also understood to imply a "disposition to lie, cheat, deceive, or defraud; unworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[11]

In the instant case, respondent Chulyao would like us to believe that she is not liable for dishonesty as the alleged irregularities imputed against her occurred due to mere inadvertence or negligence; thus, in effect raising good faith as her defense for the discrepancies discovered during the CSPE on July 31, 1988.

The evidence on record, however, is overwhelming to support the findings that Chulyao employed her sister, Pangowon, to take the July 31, 1988 CSPE conducted in Baguio City for her and in her behalf and claimed the result thereof as her own in her personal data sheet accomplished on April 23, 2007.

As observed by the CSC, there was a significant difference in the signature of the examinee Chulyao and that of the true Rita Chulyao. It noted that the true Rita Chulyao spells vividly the letter R and the letter S overlapping each other, while the examinee Rita Chulyao was not able to spell these letters as vividly and vibrantly as that of the true Rita Chulyao. The CSC added that despite the obvious effort on the part of the examinee Rita Chulyao to imitate the signature of the true Rita Chulyao, the former failed to successfully reproduce a signature as that of the true Rita Chulyao. The difference in the loops, lines,

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[11] *Crisostomo M. Plopinio v. Atty. Liza Zabala-Cariño, etc.*, A.M. No. P-08-2458, March 22, 2010.

slant, pressure, fineness, contours and style revealed that the signatures belong to two different persons.

The improbability of Chulyao's claim that the irregularity was due to mere inadvertence when she gave the picture of her sister instead of her own picture for the picture seat plan was clearly explained by the CSC.

The CSC ratiocinated, and we quote:

> The CSC has devised methods and strategies in the conduct of any civil service exam to ensure the integrity of the civil service examination. The procedure in taking any civil service exam is very rigid, stiff and taut. With the well-established procedure in administering the Civil Service Exams, it could not and never happen that the I.D. Picture of another person be pasted in the picture seat plan instead of the picture of the actual examinee. ***This is so because before the I.D. Picture of the examinee is pasted in the seat plan, the proctor will validate if the I.D. Picture submitted by the examinee is the examinee's picture. The proctor will see to it that the I.D. Picture being submitted by the examinee is his or her own picture. After the I.D. is pasted, the examinee will be required to sign below said I.D. and the signature is again validated by the proctor if the said signature is the same as the signature appearing in the application form.*** Hence, it would be highly improbable that the I.D. picture of another person would be pasted in the PSP.[12]

The CSC maintained that the person who actually took the examination was respondent's sister, Pangowon. The existence of impersonation was all the more established when Chulyao in her comments admitted that the picture appearing on the picture seat plan of the examination room was that of her sister's. The CSC stressed that the impersonation started right from the time of the filling-up of the application form until the actual examination, it was Chulyao's sister who performed all the acts of impersonation using the name of the person impersonated — Rita Chulyao. The truth was unveiled only when the result thereof was utilized by the respondent in her employment in the government service. When Chulyao filled up her personal data sheet and attached

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[12] Emphasis supplied.

her photo thereon and eventually the picture in the personal data sheet was compared to the picture on the picture seat plan, it was only then that the impersonation was discovered, because the person appearing on the picture seat plan was different from the person whose picture was attached to the personal data sheet.

No amount of good faith can be attributed to Chulyao. Good faith necessitates honesty of intention, free from any knowledge of circumstances that ought to have prompted him to undertake an inquiry.[13] Chulyao admitted that she discovered after a week or two, from the day of examination, that she had given the picture of her sister to the proctor on July 31, 1988 and yet she did not immediately report and correct said error. When the CSC called her twice to appear before the investigation being conducted regarding the incident, Chulyao failed to appear. An innocent person caught in a like situation would more likely immediately profess his innocence rather than evade an investigation which could shed light on the controversy. A truly innocent person would normally grasp the first available opportunity to defend himself and assert his innocence.[14] Thus, Chulyao's protestation of good faith and inadvertence are too incredible to be given weight. To our mind, Chulyao acted with malicious intent to perpetrate a fraud.

Furthermore, it has been a settled rule in this jurisdiction that the duly accomplished form of the Civil Service is an official document of the Commission, which, by its very nature is considered in the same category as that of a public document, admissible in evidence without need of further proof. As an official document, the contents/entries therein made in the course of official duty are *prima facie* evidence of the facts stated therein.[15]

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[13] *Faelnar v. Palabrica*, A.M. No. P-06-2251, January 20, 2009, 576 SCRA 392, 401.

[14] *Gan v. People*, G.R. No. 165884, April 23, 2007, 521 SCRA 550, 581.

[15] *Donato v. CSC*, G.R. No. 165788, February 7, 2007, 515 SCRA 48, 61-62.

Indeed, Chulyao's act of using for her benefit the fake or spurious civil service eligibility not only amounted to violation of the Civil Service Examinations, but it also resulted to the prejudice of the government and the public in general. Under the Qualification Standards (QS) of the Civil Service Commission, the eligibility needed for the position of Clerk of Court II is Career Service (Professional) Second Level Eligibility. Thus, it is clear that Chulyao was able to get her appointment as Clerk of Court II at the MCTC, Barlig, Mountain Province, by using the obtained result of the July 31, 1988 Career Service Professional Eligibility Examination.

The Court cannot turn a blind eye to what are clearly transgressions of the law. Dishonesty and falsification are malevolent acts that have no place in the Judiciary. Under Section 52, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, dishonesty is considered a grave offense punishable by dismissal even for the first offense.

Assumption of public office is impressed with the paramount public interest that requires the highest standards of ethical conduct. A person aspiring for public office must observe honesty, candor, and faithful compliance with the law. Nothing less is expected.[16]

WHEREFORE, the Court finds **RITA S. CHULYAO**, Clerk of Court II, of the Municipal Circuit Trial Court, Barlig, Mountain Province, *GUILTY* of *DISHONESTY* and orders her *DISMISSAL* from the service, with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

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[16] *Re: Administrative Case for Dishonesty and Falsification of Official Document: Benjamin R. Katly, Information Technology Officer I, Systems Development For Judicial Application Division, Management Information Systems Office*, A.M. No. 2003-9-SC, March 25, 2004.

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. MTJ-09-1745. September 28, 2010]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **HON. LEODEGARIO C. QUILATAN, Former Judge, Metropolitan Trial Court, Branch 57, San Juan City,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; GROSS INEFFICIENCY; FAILURE TO DECIDE CASES WITHIN THE REGLEMENTARY PERIOD, WITHOUT STRONG AND JUSTIFIABLE REASON, A CASE OF.— No less than the 1987 Constitution, specifically Section 15(1), Article VIII, mandates lower courts to decide or resolve all cases or matters within three (3) months from their date of submission. In relation to this mandate, the Code of Judicial Conduct directs judges to dispose of their business promptly and decide cases within the required period. The Court, in Administrative Circular No. 3-99 dated January 15, 1999, likewise requires judges to scrupulously observe the periods provided in the Constitution. Failure to decide cases within the reglementary period, without strong and justifiable reason, constitutes gross inefficiency warranting the imposition of an administrative sanction on the defaulting judge. We have repeatedly emphasized the need for judges to resolve their cases with dispatch. Delay does not only constitute a serious violation of the parties' constitutional right to speedy disposition of cases, it also erodes the faith and confidence of the people in the judiciary, lowers its standards, and brings it into disrepute. Without doubt, Judge Quilatan violated his mandate when he failed to decide 34 cases

within three (3) months from their submission, for which he should be administratively sanctioned.

2. ID.; ID.; LESS SERIOUS OFFENSE; UNDUE DELAY IN RENDERING A DECISION; PENALTY; FINE MAY BE IMPOSED BELOW OR MORE THAN THE MAXIMUM AMOUNT ALOWED; CASE AT BAR.— Under the Revised Rules of Court, undue delay in rendering a decision is a less serious offense punishable by suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months, or a fine of more than PhP 10,000 but not exceeding PhP 20, 000. There were cases, however, in which the Court did not strictly apply the rules, imposing fines below or more than the maximum amount allowed. xxx In this case, the OCA called our attention to the Resolution dated April 28, 2009 in A.M. No. 09-4-175-RTC (*Re: Cases Submitted for Decision Before Hon. Bayani Isamu Y. Ilano, Former Judge, Regional Trial Court, Branch 71, Antipolo City*), wherein we imposed a fine of PhP 50,000 for Judge Ilano's failure to decide within the reglementary period 34 cases submitted for decision prior to his date of retirement. We imposed the same penalty in another case for the judge's failure to decide 43 unexplained cases submitted for decision within the reglementary period. Since Judge Quilatan failed to decide 34 cases, a fine of PhP 50,000 is proper in line with prevailing jurisprudence.

D E C I S I O N

VELASCO, JR., *J.*:

This refers to the Memorandum Report dated September 22, 2009 of the Office of the Court Administrator (OCA) in connection with the request of former Judge Leodegario C. Quilatan, Metropolitan Trial Court (MeTC), Branch 57, San Juan City, Metro Manila, for certificate of clearance in support of his application for compulsory retirement benefits under Republic Act No. 910,[1] as amended, effective July 21, 2003.[2]

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[1] Providing for the Retirement of Justices and All Judges in the Judiciary.

[2] In the attached Certification dated May 10, 2007, Eleanor A. Sorio, Clerk of Court of Branch 57, MeTC San Juan, certified that Judge Quilatan's

Based on the monthly report of cases for May 2009, Judge Quilatan had left forty-eight (48) cases (all criminal) submitted for decision at the time of his retirement. Of the said number, thirty-four (34) cases were already beyond the reglementary period to decide and no reason or explanation is indicated in the monthly report for this occurrence.[3]

Upon evaluation, the OCA found Judge Quilatan liable for gross inefficiency for failure to decide the 34 cases submitted for decision within the required period. The OCA recommended that the case be re-docketed as a regular administrative matter and that the erring judge be fined fifty thousand pesos (PhP 50,000).[4]

Acting on the said recommendation, the Court, in a Resolution dated October 6, 2009, re-docketed the case as a regular administrative matter and required Judge Quilatan to manifest whether he would submit the case for resolution based on the pleadings filed.[5] Judge Quilatan failed to file a manifestation; thus, he is deemed to have waived the filing of his manifestation.

We adopt the findings and recommendation of the OCA.

No less than the 1987 Constitution, specifically Section 15(1), Article VIII, mandates lower courts to decide or resolve all cases or matters within three (3) months from their date of submission. In relation to this mandate, the Code of Judicial Conduct directs judges to dispose of their business promptly and decide cases within the required period. The Court, in Administrative Circular No. 3-99 dated January 15, 1999, likewise requires judges to scrupulously observe the periods provided in the Constitution.[6] Failure to decide cases within the reglementary

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last day in office was July 13, 2001 as he suffered a stroke on July 15, 2001 incapacitating him to resume office.

[3] *Rollo*, p. 2.

[4] *Id.* at 3.

[5] *Id.* at 8.

[6] *Re: Cases Submitted for Decision Before Hon. Meliton G. Emuslan, Former Judge, Regional Trial Court, Branch 47, Urdaneta City,*

period, without strong and justifiable reason, constitutes gross inefficiency warranting the imposition of an administrative sanction on the defaulting judge.[7]

We have repeatedly emphasized the need for judges to resolve their cases with dispatch.[8] Delay does not only constitute a serious violation of the parties' constitutional right to speedy disposition of cases,[9] it also erodes the faith and confidence of the people in the judiciary, lowers its standards, and brings it into disrepute.[10]

Without doubt, Judge Quilatan violated his mandate when he failed to decide 34 cases within three (3) months from their submission, for which he should be administratively sanctioned.

Under the Revised Rules of Court, undue delay in rendering a decision is a less serious offense punishable by suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months, or a fine of more than PhP 10,000 but not exceeding PhP 20,000.[11]

There were cases, however, in which the Court did not strictly apply the Rules, imposing fines below or more than the maximum amount allowed,[12] thus:

Pangasinan, A.M. No. RTJ-10-2226 (Formerly A.M. No. 10-1-24-RTC), March 22, 2010.

[7] *Re: Judicial Audit Conducted in the Regional Trial Court, Branch 6, Tacloban City,* A.M. No. RTJ-09-2171 (Formerly A.M. No. 09-94-RTC), March 17, 2009, 581 SCRA 585, 592; citation omitted.

[8] *Report on the Judicial Audit Conducted in the RTC, Branch 22, Kabacan, North Cotabato,* A.M. No. 02-8-441-RTC, March 3, 2004, 424 SCRA 206.

[9] *Re: Judicial Audit Conducted in the Regional Trial Court, Branch 6, Tacloban City*, *supra* note 8.

[10] *Report on the Judicial Audit Conducted in the RTC, Branch 22, Kabacan, North Cotabato, supra* note 9.

[11] RULES OF COURT, Rule 140, Secs. 9(1) & 11(B), as amended by A.M. No. 01-8-10-SC, effective October 1, 2001.

[12] *Office of the Court Administrator v. Judge Aniceto L. Madronio Sr., Former Acting Presiding Judge, MCTC, San Fabian-San Jacinto,*

In two cases, we imposed a fine of five thousand pesos (₱5,000) on a judge who was suffering from cancer, for failing to decide five (5) cases within the reglementary period and failing to decide pending incidents in nine (9) cases; and on a judge who suffered from a serious illness diagnosed as "end stage renal disease secondary to nephrosclerosis," who in fact died barely a year after his retirement, for his failure to decide several criminal and civil cases submitted for decision or resolution and to act upon over a hundred criminal and civil cases assigned to the two branches in which he was presiding. In other cases, the fines were variably set at more than the maximum amount when the undue delay was coupled with other offenses. In one case, the judge was fined twenty-five thousand pesos (₱25,000) for undue delay in rendering a ruling and for making a grossly and patently erroneous decision. In another case, the judge was fined forty thousand pesos (₱40,000) for deciding a case only after an undue delay of one (1) year and six (6) months and for simple misconduct and gross ignorance of the law, considering also that said undue delay was his second offense. Finally, the fine of forty thousand pesos (₱40,000) was also imposed in a case for the judge's failure to resolve one (1) motion, considering that he was already previously penalized in two cases for violating the Code of Judicial Conduct and for Gross Ignorance of Procedural Law and Unreasonable Delay. (citations omitted)

In this case, the OCA called our attention to the Resolution dated April 28, 2009 in A.M. No. 09-4-175-RTC (*Re: Cases Submitted for Decision Before Hon. Bayani Isamu Y. Ilano, Former Judge, Regional Trial Court, Branch 71, Antipolo City*), wherein we imposed a fine of PhP 50,000 for Judge Ilano's failure to decide within the reglementary period 34 cases submitted for decision prior to his date of retirement. We imposed the same penalty in another case for the judge's failure to decide 43 unexplained cases submitted for decision within the reglementary period.[13] Since Judge Quilatan failed to decide 34

Pangasinan, A.M. No. MTJ-04-1571 (Formerly A.M. No. 03-9-209-MCTC), February 14, 2005, 451 SCRA 207, 213-215.

[13] *Re: Cases Submitted for Decision Before Hon. Meliton G. Emuslan, Former Judge, Regional Trial Court, Branch 47, Urdaneta City, Pangasinan, supra* note 6.

cases, a fine of PhP 50,000 is proper in line with prevailing jurisprudence.

WHEREFORE, the Court adjudges Judge Leodegario C. Quilatan, MeTC, Branch 57, San Juan City, Metro Manila, *GUILTY* of gross inefficiency. He is hereby meted the penalty of *FINE* in the amount of PhP 50,000 to be deducted from his retirement/gratuity benefits.

SO ORDERED.

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

Perez, J., no part.

EN BANC

[G.R. No. 182574. September 28, 2010]

THE PROVINCE OF NEGROS OCCIDENTAL, represented by its Governor ISIDRO P. ZAYCO, *petitioner, vs.* **THE COMMISSIONERS, COMMISSION ON AUDIT; THE DIRECTOR, CLUSTER IV-VISAYAS; THE REGIONAL CLUSTER DIRECTORS; and THE PROVINCIAL AUDITOR, NEGROS OCCIDENTAL,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; ADMINISTRATIVE ORDER NO. 103; MAIN PURPOSE; TO PREVENT DISCONTENTMENT, DISSATISFACTION AND DEMORALIZATION AMONG GOVERNMENT

PERSONNEL, NATIONAL OR LOCAL, WHO DO NOT RECEIVE, OR WHO RECEIVE LESS, PRODUCTIVITY INCENTIVE BENEFITS OR OTHER FORMS OF ALLOWANCES OR BENEFITS.— AO 103 took effect on 14 January 1994 or eleven months before the *Sangguniang Panlalawigan* of the Province of Negros Occidental passed Resolution No. 720-A. The main purpose of AO 103 is to prevent discontentment, dissatisfaction and demoralization among government personnel, national or local, who do not receive, or who receive less, productivity incentive benefits or other forms of allowances or benefits. This is clear in the Whereas Clauses of AO 103 which state: WHEREAS, the faithful implementation of statutes, including the Administrative Code of 1987 and all laws governing all forms of additional compensation and personnel benefits is a Constitutional prerogative vested in the President of the Philippines under Section 17, Article VII of the 1987 Constitution; WHEREAS, the Constitutional prerogative includes the determination of the rates, the timing and schedule of payment, and final authority to commit limited resources of government for the payment of personal incentives, cash awards, productivity bonus, and other forms of additional compensation and fringe benefits; WHEREAS, **the unilateral and uncoordinated grant of productivity incentive benefits in the past gave rise to discontentment, dissatisfaction and demoralization among government personnel who have received less or have not received at all such benefits**; NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law and **in order to forestall further demoralization of government personnel** do hereby direct: x x x

2. ID.; ID.; ID.; ID.; SECTION 2 THEREOF; ENJOINS ALL HEADS OF GOVERNMENT OFFICES AND AGENCIES FROM GRANTING PRODUCTIVITY INCENTIVE BENEFITS OR ANY AND ALL SIMILAR FORMS OF ALLOWANCES AND BENEFITS WITHOUT THE PRESIDENT'S PRIOR APPROVAL.— In Section 2, the President enjoined all heads of government offices and agencies from granting productivity incentive benefits or any and all similar forms of allowances and benefits without the President's prior approval.

3. ID.; ID.; ID.; ID.; ID.; ID.; REQUIREMENT OF PRIOR APROVAL FROM THE PRESIDENT INDICATED UNDER SECTION 2 DOES NOT APPLY TO LOCAL GOVERNMENT UNITS.— From a close reading of the provisions of AO 103, petitioner did not violate the rule of prior approval from the President since Section 2 states that the prohibition applies only to "*government offices/agencies, including government-owned and/or controlled corporations, as well as their respective governing boards.*" Nowhere is it indicated in Section 2 that the prohibition also applies to LGUs. The requirement then of prior approval from the President under AO 103 is applicable only to departments, bureaus, offices and government-owned and controlled corporations under the Executive branch. In other words, AO 103 must be observed by government offices under the President's control as mandated by Section 17, Article VII of the Constitution which states: Section 17. The President shall have control of all **executive** departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

4. ID.; CONSTITUTIONAL LAW; LOCAL GOVERNMENTS; A LOCAL GOVERNMENT UNIT IS UNDER THE PRESIDENT'S GENERAL SUPERVISION; PRESIDENT'S POWER OF GENERAL SUPERVISION, DISTINGUISHED FROM PRESIDENT'S POWER OF CONTROL.— Being an LGU, petitioner is merely under the President's general supervision pursuant to Section 4, Article X of the Constitution: Sec. 4. **The President of the Philippines shall exercise general supervision over local governments.** Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component *barangays* shall ensure that the acts of their component units are within the scope of their prescribed powers and functions. The President's power of general supervision means the power of a superior officer to see to it that subordinates perform their functions according to law. This is distinguished from the President's power of control which is the power to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the President over that of the subordinate officer. The power of control gives the President the power to revise or reverse the acts or decisions of a subordinate officer involving the exercise of

discretion. Since LGUs are subject only to the power of general supervision of the President, the President's authority is limited to seeing to it that rules are followed and laws are faithfully executed. The President may only point out that rules have not been followed but the President cannot lay down the rules, neither does he have the discretion to modify or replace the rules. Thus, the grant of additional compensation like hospitalization and health care insurance benefits in the present case does not need the approval of the President to be valid.

5. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; ADMINISTRATIVE ORDER NO. 103; NOT VIOLATED IN CASE AT BAR; GRANT AND RELEASE OF HOSPITALIZATION AND HEALTH CARE INSURANCE BENEFITS WERE VALIDLY ENACTED THROUGH AN ORDINANCE.— The CSC, through CSC MC No. 33, as well as the President, through AO 402, recognized the deficiency of the state of health care and medical services implemented at the time. Republic Act No. 7875 or the National Health Insurance Act of 1995 instituting a National Health Insurance Program (NHIP) for all Filipinos was only approved on 14 February 1995 or about two months after petitioner's *Sangguniang Panlalawigan* passed Resolution No. 720-A. Even with the establishment of the NHIP, AO 402 was still issued three years later addressing a primary concern that basic health services under the NHIP either are still inadequate or have not reached geographic areas like that of petitioner. Thus, consistent with the state policy of local autonomy as guaranteed by the 1987 Constitution, under Section 25, Article II and Section 2, Article X, and the Local Government Code of 1991, we declare that the grant and release of the hospitalization and health care insurance benefits given to petitioner's officials and employees were validly enacted through an ordinance passed by petitioner's *Sangguniang Panlalawigan*. In sum, since petitioner's grant and release of the questioned disbursement without the President's approval did not violate the President's directive in AO 103, the COA then gravely abused its discretion in applying AO 103 to disallow the premium payment for the hospitalization and health care insurance benefits of petitioner's officials and employees.

APPEARANCES OF COUNSEL

Provincial Legal Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for *certiorari*[1] assailing Decision No. 2006-044[2] dated 14 July 2006 and Decision No. 2008-010[3] dated 30 January 2008 of the Commission on Audit (COA) disallowing premium payment for the hospitalization and health care insurance benefits of 1,949 officials and employees of the Province of Negros Occidental.

The Facts

On 21 December 1994, the *Sangguniang Panlalawigan* of Negros Occidental passed Resolution No. 720-A[4] allocating ₱4,000,000 of its retained earnings for the hospitalization and health care insurance benefits of 1,949 officials and employees of the province. After a public bidding, the Committee on Awards granted the insurance coverage to Philam Care Health System Incorporated (Philam Care).

Petitioner Province of Negros Occidental, represented by its then Governor Rafael L. Coscolluela, and Philam Care entered into a Group Health Care Agreement involving a total payment of ₱3,760,000 representing the insurance premiums of its officials and employees. The total premium amount was paid on 25 January 1996.

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[1] Under Rule 65 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 24-31. Penned by Chairman Guillermo N. Carague with Commissioners Reynaldo A. Villar and Juanito G. Espino, Jr., concurring.

[3] *Id.* at 32-38.

[4] *Id.* at 49-50.

On 23 January 1997, after a post-audit investigation, the Provincial Auditor issued Notice of Suspension No. 97-001-101[5] suspending the premium payment because of lack of approval from the Office of the President (OP) as provided under Administrative Order No. 103[6] (AO 103) dated 14 January 1994. The Provincial Auditor explained that the premium payment for health care benefits violated Republic Act No. 6758 (RA 6758),[7] otherwise known as the Salary Standardization Law.

Petitioner complied with the directive *post-facto* and sent a letter-request dated 12 January 1999 to the OP. In a Memorandum dated 26 January 1999,[8] then President Joseph E. Estrada directed the COA to lift the suspension but only in the amount of ₱100,000. The Provincial Auditor ignored the directive of the President and instead issued Notice of Disallowance No. 99-005-101(96)[9] dated 10 September 1999 stating similar grounds as mentioned in Notice of Suspension No. 97-001-101.

Petitioner appealed the disallowance to the COA. In a Decision dated 14 July 2006, the COA affirmed the Provincial Auditor's Notice of Disallowance dated 10 September 1999.[10] The COA ruled that under AO 103, no government entity, including a local government unit, is exempt from securing prior approval from the President granting additional benefits to its personnel. This is in conformity with the policy of standardization of compensation laid down in RA 6758. The COA added that

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[5] *Id.* at 39.

[6] Authorizing the Grant of CY-1993 Productivity Incentive Benefits to Government Personnel and Prohibiting Payments of Similar Benefits in Future Years Unless Duly Authorized by the President.

[7] An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes. This Act took effect on 1 July 1989.

[8] *Rollo*, p. 67.

[9] *Id.* at 68.

[10] *Id.* at 24-31. Decided by Chairman Guillermo N. Carague, Commissioner Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr.

Section 468(a)(1)(viii)[11] of Republic Act No. 7160 (RA 7160) or the Local Government Code of 1991 relied upon by petitioner does not stand on its own but has to be harmonized with Section 12[12] of RA 6758.

Further, the COA stated that the insurance benefits from Philam Care, a private insurance company, was a duplication of the benefits provided to employees under the Medicare program which is mandated by law. Being merely a creation of a local legislative body, the provincial health care program should not contravene but instead be consistent with national laws enacted by Congress from where local legislative bodies draw their authority.

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[11] SECTION 468. *Powers, Duties, Functions and Compensation*. — (a) The sangguniang panlalawigan, as the legislative body of the province, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the province and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the province as provided for under Section 22 of this Code, and shall:

(1) Approve ordinances and pass resolutions necessary for an efficient and effective provincial government and, in this connection, shall:

x x x x x x x x x

(viii) Determine the positions and salaries, wages, allowances and other emoluments and benefits of officials and employees paid wholly or mainly from provincial funds and provide for expenditures necessary for the proper conduct of programs, projects, services, and activities of the provincial government x x x.

[12] Section 12. *Consolidation of Allowances and Compensation*. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

The COA held the following persons liable: (1) all the 1,949 officials and employees of the province who benefited from the hospitalization and health care insurance benefits with regard to their proportionate shares; (2) former Governor Rafael L. Coscolluela, being the person who signed the contract on behalf of petitioner as well as the person who approved the disbursement voucher; and (3) the *Sangguniang Panlalawigan* members who passed Resolution No. 720-A. The COA did not hold Philam Care and Provincial Accountant Merly P. Fortu liable for the disallowed disbursement. The COA explained that it was unjust to require Philam Care to refund the amount received for services it had duly rendered since insurance law prohibits the refund of premiums after risks had already attached to the policy contract. As for the Provincial Accountant, the COA declared that the *Sangguniang Panlalawigan* resolution was sufficient basis for the accountant to sign the disbursement voucher since there were adequate funds available for the purpose. However, being one of the officials who benefited from the subject disallowance, the inclusion of the accountant's name in the persons liable was proper with regard to her proportionate share of the premium.

The dispositive portion of the COA's 14 July 2006 decision states:

> WHEREFORE, premises considered, and finding no substantial ground or cogent reason to disturb the subject disallowance, the instant appeal is hereby denied for lack of merit. Accordingly, Notice of Disallowance No. 99-005-101(96) dated 10 September 1999 in the total amount of ₱3,760,000.00 representing the hospitalization and insurance benefits of the officials and employees of the Province of Negros Occidental is hereby AFFIRMED and the refund thereof is hereby ordered.
>
> The Cluster Director, Cluster IV-Visayas, COA Regional Office No. VII, Cebu City shall ensure the proper implementation of this decision.[13]

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[13] *Rollo*, p. 31.

Petitioner filed a Motion for Reconsideration dated 23 October 2006 which the COA denied in a Resolution dated 30 January 2008.

Hence, the instant petition.

The Issue

The main issue is whether COA committed grave abuse of discretion in affirming the disallowance of ₱3,760,000 for premium paid for the hospitalization and health care insurance benefits granted by the Province of Negros Occidental to its 1,949 officials and employees.

The Court's Ruling

Petitioner insists that the payment of the insurance premium for the health benefits of its officers and employees was not unlawful and improper since it was paid from an allocation of its retained earnings pursuant to a valid appropriation ordinance. Petitioner states that such enactment was a clear exercise of its express powers under the principle of local fiscal autonomy which includes the power of Local Government Units (LGUs) to allocate their resources in accordance with their own priorities. Petitioner adds that while it is true that LGUs are only agents of the national government and local autonomy simply means decentralization, it is equally true that an LGU has fiscal control over its own revenues derived solely from its own tax base.

Respondents, on the other hand, maintain that although LGUs are afforded local fiscal autonomy, LGUs are still bound by RA 6758 and their actions are subject to the scrutiny of the Department of Budget and Management (DBM) and applicable auditing rules and regulations enforced by the COA. Respondents add that the grant of additional compensation, like the hospitalization and health care insurance benefits in the present case, must have prior Presidential approval to conform with the state policy on salary standardization for government workers.

AO 103 took effect on 14 January 1994 or eleven months before the *Sangguniang Panlalawigan* of the Province of Negros Occidental passed Resolution No. 720-A. The main purpose of

AO 103 is to prevent discontentment, dissatisfaction and demoralization among government personnel, national or local, who do not receive, or who receive less, productivity incentive benefits or other forms of allowances or benefits. This is clear in the Whereas Clauses of AO 103 which state:

WHEREAS, the faithful implementation of statutes, including the Administrative Code of 1987 and all laws governing all forms of additional compensation and personnel benefits is a Constitutional prerogative vested in the President of the Philippines under Section 17, Article VII of the 1987 Constitution;

WHEREAS, the Constitutional prerogative includes the determination of the rates, the timing and schedule of payment, and final authority to commit limited resources of government for the payment of personal incentives, cash awards, productivity bonus, and other forms of additional compensation and fringe benefits;

WHEREAS, **the unilateral and uncoordinated grant of productivity incentive benefits in the past gave rise to discontentment, dissatisfaction and demoralization among government personnel who have received less or have not received at all such benefits**;

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law and **in order to forestall further demoralization of government personnel** do hereby direct: x x x (Emphasis supplied)

Sections 1 and 2 of AO 103 state:

SECTION 1. **All agencies of the National Government including government-owned and/or -controlled corporations and government financial institutions, and local government units**, are hereby authorized to grant productivity incentive benefit in the maximum amount of TWO THOUSAND PESOS (₱2,000.00) each to their permanent and full-time temporary and casual employees, including contractual personnel with employment in the nature of a regular employee, who have rendered at least one (1) year of service in the Government as of December 31, 1993.

SECTION 2. **All heads of government offices/agencies, including government owned and/or controlled corporations, as well as their respective governing boards** are hereby enjoined

and prohibited from authorizing/granting Productivity Incentive Benefits or any and all forms of allowances/benefits without prior approval and authorization via Administrative Order by the Office of the President. Henceforth, anyone found violating any of the mandates in this Order, including all officials/agency found to have taken part thereof, shall be accordingly and severely dealt with in accordance with the applicable provisions of existing administrative and penal laws.

Consequently, all administrative authorizations to grant any form of allowances/benefits and all forms of additional compensation usually paid outside of the prescribed basic salary under R.A. 6758, the Salary Standardization Law, that are inconsistent with the legislated policy on the matter or are not covered by any legislative action are hereby revoked. (Emphasis supplied)

It is clear from Section 1 of AO 103 that the President authorized all agencies of the national government as well as LGUs to grant the maximum amount of ₱2,000 productivity incentive benefit to each employee who has rendered at least one year of service as of 31 December 1993. In Section 2, the President enjoined all heads of government offices and agencies from granting productivity incentive benefits or any and all similar forms of allowances and benefits without the President's prior approval.

In the present case, petitioner, through an approved *Sangguniang Panlalawigan* resolution, granted and released the disbursement for the hospitalization and health care insurance benefits of the province's officials and employees without any prior approval from the President. The COA disallowed the premium payment for such benefits since petitioner disregarded AO 103 and RA 6758.

We disagree with the COA. From a close reading of the provisions of AO 103, petitioner did not violate the rule of prior approval from the President since Section 2 states that the prohibition applies only to "*government offices/agencies, including government-owned and/or controlled corporations, as well as their respective governing boards.*" Nowhere is it indicated in Section 2 that the prohibition also applies to LGUs. The requirement then of prior approval from the President under

AO 103 is applicable only to departments, bureaus, offices and government-owned and controlled corporations under the Executive branch. In other words, AO 103 must be observed by government offices under the President's control as mandated by Section 17, Article VII of the Constitution which states:

> Section 17. The President shall have control of all **executive** departments, bureaus and offices. He shall ensure that the laws be faithfully executed. (Emphasis supplied)

Being an LGU, petitioner is merely under the President's general supervision pursuant to Section 4, Article X of the Constitution:

> Sec. 4. **The President of the Philippines shall exercise general supervision over local governments.** Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component *barangays* shall ensure that the acts of their component units are within the scope of their prescribed powers and functions. (Emphasis supplied)

The President's power of general supervision means the power of a superior officer to see to it that subordinates perform their functions according to law.[14] This is distinguished from the President's power of control which is the power to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the President over that of the subordinate officer.[15] The power of control gives the President the power to revise or reverse the acts or decisions of a subordinate officer involving the exercise of discretion.[16]

Since LGUs are subject only to the power of general supervision of the President, the President's authority is limited to seeing

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[14] *De Villa v. City of Bacolod*, G.R. No. 80744, 20 September 1990, 189 SCRA 736.

[15] *Bito-Onon v. Judge Yap Fernandez*, 403 Phil. 693 (2001).

[16] *Rufino v. Endriga*, G.R. No. 139554, 21 July 2006, 496 SCRA 13, citing *Mondano v. Silvosa*, 97 Phil. 143 (1955).

to it that rules are followed and laws are faithfully executed. The President may only point out that rules have not been followed but the President cannot lay down the rules, neither does he have the discretion to modify or replace the rules. Thus, the grant of additional compensation like hospitalization and health care insurance benefits in the present case does not need the approval of the President to be valid.

Also, while it is true that LGUs are still bound by RA 6758, the COA did not clearly establish that the medical care benefits given by the government at the time under Presidential Decree No. 1519[17] were sufficient to cover the needs of government employees especially those employed by LGUs.

Petitioner correctly relied on the Civil Service Commission's (CSC) Memorandum Circular No. 33 (CSC MC No. 33), series of 1997, issued on 22 December 1997 which provided the policy framework for working conditions at the workplace. In this circular, the CSC pursuant to CSC Resolution No. 97-4684 dated 18 December 1997 took note of the inadequate policy on basic health and safety conditions of work experienced by government personnel. Thus, under CSC MC No. 33, all government offices including LGUs were directed to provide a health program for government employees which included hospitalization services and annual mental, medical-physical examinations.

Later, CSC MC No. 33 was further reiterated in Administrative Order No. 402[18] (AO 402) which took effect on 2 June 1998. Sections 1, 2, and 4 of AO 402 state:

Section 1. *Establishment of the Annual Medical Check-up Program*. — An annual medical check-up for government of officials and employees is hereby authorized to be established starting this year, in the meantime that this benefit is not yet integrated under

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[17] Revised Philippine Medical Care Act which was approved on 11 June 1978. This Act revised Republic Act No. 6111 or the Philippine Medical Care Act of 1969 which took effect on 4 August 1969.

[18] Establishment of a Medical Check-up Program for Government Personnel.

the National Health Insurance Program being administered by the Philippine Health Insurance Corporation (PHIC).

Section 2. *Coverage*. — x x x **Local Government Units are also encouraged to establish a similar program for their personnel.**

Section 4. *Funding*. — x x x Local Government Units, which may establish a similar medical program for their personnel, shall utilize local funds for the purpose. (Emphasis supplied)

The CSC, through CSC MC No. 33, as well as the President, through AO 402, recognized the deficiency of the state of health care and medical services implemented at the time. Republic Act No. 7875[19] or the National Health Insurance Act of 1995 instituting a National Health Insurance Program (NHIP) for all Filipinos was only approved on 14 February 1995 or about two months after petitioner's *Sangguniang Panlalawigan* passed Resolution No. 720-A. Even with the establishment of the NHIP, AO 402 was still issued three years later addressing a primary concern that basic health services under the NHIP either are still inadequate or have not reached geographic areas like that of petitioner.

Thus, consistent with the state policy of local autonomy as guaranteed by the 1987 Constitution, under Section 25, Article II[20] and Section 2, Article X,[21] and the Local Government Code of 1991,[22] we declare that the grant and release of the hospitalization and health care insurance benefits given to petitioner's officials and employees were validly enacted through an ordinance passed by petitioner's *Sangguniang Panlalawigan*.

In sum, since petitioner's grant and release of the questioned disbursement without the President's approval did not violate

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[19] An Act Instituting a National Health Insurance Program for All Filipinos and Establishing the Philippine Health Insurance Corporation for the Purpose.

[20] Section 25. The State shall ensure the autonomy of local governments.

[21] Section 2. The territorial and political subdivisions shall enjoy local autonomy.

[22] *Supra* note 11.

the President's directive in AO 103, the COA then gravely abused its discretion in applying AO 103 to disallow the premium payment for the hospitalization and health care insurance benefits of petitioner's officials and employees.

WHEREFORE, we *GRANT* the petition. We *REVERSE AND SET ASIDE* Decision No. 2006-044 dated 14 July 2006 and Decision No. 2008-010 dated 30 January 2008 of the Commission on Audit.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-08-2487. September 29, 2010]

TANCHING L. WEE, Sheriff IV, Regional Trial Court, Branch 32, Cabarroguis, Quirino, and NELITA G. WEE, *complainants, vs.* **VIRGILIO T. BUNAO, JR., Court Interpreter III, Regional Trial Court, Branch 31, Cabarroguis, Quirino,** *respondent.*

[A.M. No. P-08-2493. September 29, 2010]

VIRGILIO T. BUNAO, JR., Court Interpreter III, Regional Trial Court, Branch 31, Cabarroguis, Quirino, *complainant, vs.* **TANCHING L. WEE, Sheriff IV, Regional Trial Court, Branch 32, Cabarroguis, Quirino,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; REQUIRED CONDUCT.— The conduct and behavior of every official and employee of an agency involved in the administration of justice, from the presiding judge to the most junior clerk, should be circumscribed with the heavy burden of responsibility. Their conduct must at all times be characterized by strict propriety and decorum so as to earn and keep the public's respect for the judiciary. Any fighting or misunderstanding among court employees becomes a disgraceful sight reflecting adversely on the good image of the judiciary. Professionalism, respect for the rights of others, good manners, and right conduct are expected of all judicial officers and employees. This standard is applied with respect to a court employee's dealings not only with the public but also with his or her co-workers in the service. Conduct violative of this standard quickly and surely corrodes respect for the courts.

2. ID.; ID.; ID.; LESS GRAVE OFFENSES; SIMPLE MISCONDUCT; PENALTY.— Simple misconduct is a less grave offense which carries the penalty of Suspension for one month and one day to six months for the first offense and the penalty of Dismissal for the second offense. Executive Judge Cacatian's report did not find any offensive conduct, and consequently did not prescribed any penalty. The OCA report, however, found both Wee and Bunao liable for simple misconduct and recommended a penalty in the greater interest of preserving the good image of the judiciary. The recommendation of the OCA is well-taken.

D E C I S I O N

CARPIO, *J.*:

Before the Court are two administrative complaints: A.M. No. P-08-2487 charging Virgilio T. Bunao, Jr. (Bunao), Court Interpreter III of the Regional Trial Court (RTC), Branch 31, Cabarroguis, Quirino, with misconduct, conduct unbecoming an employee, and unethical conduct; and A.M. No. P-08-2493 charging Tanching L. Wee (Wee), Sheriff IV of RTC, Branch 32,

Cabarroguis, Quirino, for violation of civil service law, special laws and administrative circulars of the Supreme Court. The Office of the Court Administator (OCA) recommended that both Bunao and Wee be held liable for simple misconduct and penalized accordingly.

The Facts

The memorandum from the OCA narrated the facts as follows:

In the Joint Affidavit-Complaint dated August 31, 2007, Spouses Tanching L. Wee, Sheriff IV, Regional Trial Court, Branch 32, Cabarroguis, Quirino, and Nelita G. Wee, charged Virgilio T. Bunao, Jr., Interpreter III, Regional Trial Court, Branch 31, same place, with Misconduct and/or Conduct Unbecoming a Court Employee and/or Violation of RA 6713 relative to the incident which transpired inside the courtroom of RTC, Branch 31 on August 7, 2007.

Sheriff Wee was the private complainant in Criminal Case No. 1395 filed before the RTC, Branch 31, Cabarroguis, Quirino. In a hearing in the criminal case on July 3, 2007, Mrs. Wee testified as a witness in favor of her husband. On August 7, 2007, Mrs. Wee was scheduled to be placed on the witness stand for cross-examination but before the start of the court session, the spouses conferred with Assistant Prosecutor Alfredo A. Balajo, Jr. for rectification of an error in the Transcript of Stenographic Notes (TSN) taken during her direct testimony. Allegedly, Mrs. Wee's answer No. 7 in page 3 of the transcript should be "No" instead of "Yes."

Interpreter Bunao, Jr., who was then listening to the conversation, intervened and insisted that the answer is, "Yes." Mrs. Wee claimed that it was herself who gave the testimony and she did not answer that way. Interpreter Bunao, Jr. however retorted, "*HUSTO DAYTA, ISU TI NANGGEG KO* (THAT IS CORRECT, THAT IS WHAT I HEARD)." At this point, Sheriff Wee quipped, "*APAY PAKIALAM MO TOY KASOK, INTERPRETER KA LANG* (WHY MEDDLE IN MY CASE, YOU'RE JUST AN INTERPRETER)." Interpreter Bunao, Jr. insisted that he is the interpreter and he knows all. Sheriff Wee replied, "*INTERPRETER KA LANG GAGO* (YOU'RE JUST AN INTERPRETER, STUPID)!," to which the other replied, "*BOBO KA MET INTERPRETERAK DITOY NGA KORTE* (YOU'RE DAMN [sic], I AM THE INTERPRETER IN THIS COURT)!"

In his Comment dated November 19, 2007, Interpreter Bunao, Jr. denied the accusations of Spouses Wee. He alleged that at about 8:30 in the morning of August 7, 2007, Mrs. Wee came to their office and asked Court Stenographer Luhlu Bugawan to change the former's answer from "YES" to "NO." After checking her stenographic notes and consulting with Stenographer Lilia Casuple, Stenographer Bugawan informed Mrs. Wee that the latter's answer was indeed "YES." Interpreter Bunao, Jr. likewise claimed that what he heard was "YES" which irked Mrs. Wee.

At around 9 o'clock of the same morning, while Interpreter Bunao, Jr. was waiting for the court session to begin and having a conversation with Assistant Prosecutor Balajo, Jr., Sheriff Wee interrupted them. The sheriff told Assistant [Prosecutor] Balajo, Jr. of the alleged error in the TSN. When Interpreter Bunao, Jr. informed the sheriff of what he heard during the hearing, the the (sic) latter went berserk and said, "*OKINNAM, INTERPRETER KA LANG, ANIA COMA TI PAKIALAM MO DITOY A KASOK (CUNT OF YOUR MOTHER, YOU ARE JUST AN INTERPRETER, YOU HAVE NOTHING TO DO WITH MY CASE*)." Sheriff Wee tried to attack Interpreter Bunao, Jr. but the former was restrained by his wife.

In the Administrative Complaint dated August 13, 2007 filed by Interpreter Bunao, Jr. against Sheriff Wee and the latter's Comment dated September 17, 2007, the parties basically stated similar allegations and denials.[1]

Bunao filed a Complaint[2] dated 13 August 2007 before the the OCA. Then Court Administrator Christopher Lock (CA Lock) directed Wee to file his comment within ten days from receipt of the indorsement from the OCA. The OCA did not receive any comment from Wee, so the OCA sent a first tracer to Wee dated 8 November 2007 and again asked him to file his comment. Wee responded[3] to the first tracer and stated that he mailed his comment to the OCA on 18 September 2007. Wee sent two more copies of his comment to the OCA.

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[1] *Rollo* (A.M. No. P-08-2487), pp. 213-214.

[2] *Rollo* (A.M. No. P-08-2493), pp. 1-4.

[3] *Id.* at 22.

For his part, Wee sent a sworn complaint[4] to the OCA on 13 August 2007. In a letter[5] dated 10 October 2007, CA Lock returned Wee's complaint for failure to attach the affidavits of persons who have personal knowledge of the facts alleged in the complaint or the documents which substantiate the allegations in the complaint, as required by the Uniform Rules on Administrative Cases in the Civil Service. CA Lock directed Wee to comply with the rule within ten days from receipt of the letter to warrant appropriate action. Wee, along with his wife Nelita, sent a Joint Affidavit-Complaint[6] to the OCA on 7 September 2007. The OCA required Bunao to file his Comment.[7]

The OCA's Ruling

On Bunao's Complaint (A.M. No. P-08-2493)

On 11 July 2008, the OCA issued its Evaluation and Recommendation on Bunao's complaint. The pertinent portions read as follows:

EVALUATION:

The Court has long drawn out the standard of the conduct for Court personnel or employees in Judicial Service. It is well-established that since the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standard of honesty, integrity and uprightness [*Bernadez vs. Montejar*, 378 SCRA 540 (2002)]. The Court has stressed that high strung and belligerent behavior has no place in government service where the personnel are enjoined to act with self-restraint and civility at all times even when confronted with rudeness and insolence. Such conduct is exacted from them so that they earn and keep the public respect or confidence in the judicial service. This standard is applied with respect to Court employees' dealings not only with the public but also with his co-workers in the service. Conduct violative of this standard quickly and surely corrodes respect for the Court.

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[4] *Rollo* (A.M. No. P-08-2487), pp. 3-4.

[5] *Id.* at 5.

[6] *Id.* at 9-11.

[7] *Id.* at 15.

In the instant case, the pleadings submitted by both parties are not enough to resolve the factual issues attendant to the present case. Hence, a formal investigation is necessary to reconcile the conflicting versions presented by the parties.

RECOMMENDATION: Respectfully submitted for the consideration of this Honorable Court are recommendations that the instant case be RE-DOCKETED as a regular administrative matter and the same be REFERRED to the Executive Judge of Regional Trial Court, Cabarroguis, Quirino for investigation, report, and recommendation within sixty (60) days upon receipt of the records.[8]

On Wee's Complaint (A.M. No. P-08-2487)

On 24 April 2008, the OCA issued its Evaluation and Recommendation on Wee's complaint. The pertinent portions read as follows:

EVALUATION:

Records reveal that both the complainants and respondent accuse each other of throwing unsavory remarks against each other, thus undermining the integrity of the judiciary. However, aside from their bare accusations and few photocopied supporting documents, there is nothing more for this Office to consider in order to make an intelligent evaluation. Considering that the allegations brought up by the complainants and the defenses raised up by respondent present factual issues that cannot be categorically resolved based on the records at hand, there is a necessity for the issues to be ventilated in a formal investigation where the complainants and respondent will be given the chance to adduce their respective evidence. Furthermore, considering that there is another administrative complaint (docketed as OCA I.P.I. No. 07-2622-P) filed by respondent court interpreter against complainant Sheriff IV Tanching L. Wee involving similar factual issues, and in order to expedite the resolution of the instant matter, this complaint against Court Interpreter Virgilio T. Bunao, Jr. should be consolidated with OCA I.P.I. No. 07-2622-P and be the subject of a joint investigation.

RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court is the recommendation that

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[8] *Rollo* (A.M. No. P-08-2493), p. 50.

the instant administrative complaint against respondent Court Interpreter III Virgilio T. Bunao, Jr. be CONSOLIDATED with OCA I.P.I. No. 07-2622-P (*Virgilio T. Bunao, Jr. vs. Tan Ching Wee, Sheriff IV*), and be RE-DOCKETED as a regular administrative matter, and that the consolidated cases be REFERRED to the Executive Judge of the Regional Trial Court, Cabarroguis, Quirino for investigation, report, and recommendation within sixty (60) days from receipt of the records.[9]

This Court, in a resolution[10] dated 30 June 2008, consolidated A.M. Nos. P-08-2487 and P-07-2622 and re-docketed the consolidated cases as regular administrative matters. This Court also referred the administrative matters to the Executive Judge of the RTC, Cabarroguis, Quirino for investigation, report and recommendation within 60 days from receipt of the records.

However, in a letter[11] dated 11 September 2008, Executive Judge Moises Pardo (Judge Pardo) asked to be inhibited from investigating the administrative matters because he has immediate supervision over both Bunao and Wee. Judge Pardo is the Presiding Judge of Branch 31, where Bunao is the interpreter, and is concurrently the Acting Presiding Judge of Branch 32, where Wee is the sheriff. The OCA recommended that the Executive Judge of the RTC, Santiago City, Isabela, Judge Efren M. Cacatian (Judge Cacatian), be designated as the Investigating Judge in Judge Pardo's stead.[12]

The Executive Judge's Ruling

On 28 May 2009, Judge Cacatian submitted his report and recommendation on the consolidated cases before this Court.

Analyzing the incident in question, the undersigned believes that, really, there was nothing unusual: nothing more happened except the shouting against each other, which is just the normal behavior

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[9] *Rollo* (A.M. No. P-08-2487), pp. 63-64.

[10] *Rollo* (A.M. No. P-08-2493), p. 51.

[11] *Rollo* (A.M. No. P-08-2487), p. 66.

[12] *Id.* at 70.

of a normal person who gets irritated or irked. It was due to lack of due intercession of their superiors that pushed them to bring out their grievances unnecessarily to the Office of the Honorable Court Administrator. If only their executive judge would have exercised his fatherly influence and compassion to them, the parties would not have come out divisively.

Based on these findings and conclusions, the undersigned is convinced that the parties have not committed any grave misconduct unbecoming of them, considering that it was an isolated case, unnoticed and un-offensive. It is, therefore, recommended that the subject cases be dismissed and declared closed and terminated, in the interest of the service.

SO RECOMMENDED.[13]

The OCA's Recommendation

On 8 September 2009, the OCA submitted its report and recommendation before this Court.

Notwithstanding his finding that the Sheriff and the Interpreter engaged in a verbal tussle, the Investigating Judge recommended that the administrative cases be dismissed. He concluded that "the parties have not committed any grave misconduct unbecoming of them, considering that it was an isolated case, unnoticed and unoffensive."

Contrary to the conclusion of the investigating judge, we are of the opinion that the conduct of both Sheriff Wee and Interpreter Bunao, Jr. fell short of the high standard of judicial service. The act of engaging in a shouting match, one even cursing the other, within the court premises, is censurable, to say the least. Court employees are supposed to be well-mannered, civil and considerate in their actuations, both in their relations with co-workers and the transacting public. Boorishness, foul language and any misbehavior in court premises diminishes its sanctity and dignity. It must be noted that the incident transpired in the session hall of RTC, Branch 31, Cabarroguis, Quirino in the presence of Judge Mendrado Corpuz and Assistant Prosecutor Balajo, Jr.

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[13] *Id.* at 88.

It has been held that fighting between court employees during office hours is a disgraceful behavior reflecting adversely on the good image of the judiciary. It displays a cavalier attitude towards the seriousness and dignity with which court business should be treated. Shouting at one another in the workplace during office hours is arrant discourtesy and disrespect not only towards co-workers, but to the court as well. The behavior of the parties was totally unbecoming members of the judicial service. Such conduct cannot be countenanced.

Based on the findings in these administrative cases, both Sheriff Wee and Interpreter Bunao, Jr. should be held guilty for simple misconduct. Misconduct is a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer. In previous cases involving court personnel fighting with their co-employees within the court premises, the Court imposed a fine of ₱1,000.00 with reprimand against the erring personnel. The same penalty should be imposed upon the contending parties herein.

In view of the foregoing, it is respectfully submitted for the consideration of the Honorable Court the recommendations that both Tanching L. Wee, Sheriff IV, RTC, Branch 32, Cabarroguis, Quirino, and Virgilio T. Bunao, Jr., Court Interpreter III, RTC, Branch 31, Cabarroguis, Quirino, be held liable for simple misconduct and be FINED in the amount of ₱1,000.00 each, with REPRIMAND, and with STERN WARNING that repetition of the same or similar offense in the future shall be dealt with more severely.[14]

The Court's Ruling

We adopt the recommendation of the OCA.

This Court cannot tolerate such misconduct on the part of its employees. The reported exchanges between Bunao and Wee in the court premises, and in the presence of Judge Mendrado V. Corpuz and Assistant Prosecutor Alfredo A. Balajo, Jr., is disgraceful behavior. Shouting at each other within the court premises exhibits discourtesy and disrespect not only towards co-workers but to the court as well.[15] The conduct and behavior

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[14] *Id.* at 214-215.

[15] *Quiroz v. Orfila*, 338 Phil. 828 (1997).

of every official and employee of an agency involved in the administration of justice, from the presiding judge to the most junior clerk, should be circumscribed with the heavy burden of responsibility. Their conduct must at all times be characterized by strict propriety and decorum so as to earn and keep the public's respect for the judiciary.[16] Any fighting or misunderstanding among court employees becomes a disgraceful sight reflecting adversely on the good image of the judiciary. Professionalism, respect for the rights of others, good manners, and right conduct are expected of all judicial officers and employees.[17] This standard is applied with respect to a court employee's dealings not only with the public but also with his or her co-workers in the service. Conduct violative of this standard quickly and surely corrodes respect for the courts.[18]

Simple misconduct is a less grave offense which carries the penalty of Suspension for one month and one day to six months for the first offense and the penalty of Dismissal for the second offense.[19] Executive Judge Cacatian's report did not find any offensive conduct, and consequently did not prescribe any penalty. The OCA report, however, found both Wee and Bunao liable for simple misconduct and recommended a penalty in the greater interest of preserving the good image of the judiciary. The recommendation of the OCA is well-taken.

WHEREFORE, Tanching L. Wee, Sheriff IV, RTC, Branch 32, Cabarroguis, Quirino, and Virgilio T. Bunao, Jr., Court Interpreter III, RTC, Branch 31, Cabarroguis, Quirino, are *FINED* ₱1,000 each for simple misconduct. Wee and Bunao, Jr. are also *REPRIMANDED*, and are *STERNLY WARNED*, that a repetition of the same or similar offense in the future shall be dealt with more severely.

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[16] *Apaga v. Ponce*, 315 Phil. 226 (1995).

[17] *Casanova, Jr. v. Cajayon*, 448 Phil. 573 (2003).

[18] *Aquino v. Israel,* A.M. No. P-04-1800, 25 March 2004, 426 SCRA 266.

[19] Section 23(b), Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.*, concur.

SECOND DIVISION

[A.M. No. RTJ-10-2248.* September 29, 2010]

JUDGE ADORACION G. ANGELES, *complainant, vs.* **JUDGE MARIA ELISA SEMPIO DIY, Presiding Judge, Regional Trial Court, Quezon City, Branch 225,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; UNDUE DELAY IN RESOLVING CASES; DELAY IN RESOLVING MOTIONS AND INCIDENTS WITHIN THE REGLEMENTARY PERIOD OF 90 DAYS FIXED BY LAW CANNOT BE EXCUSED OR CONDONED.— Rule 3.05, Canon 3 of the Code of Judicial Conduct admonishes all judges to dispose of the court's business promptly and decide cases within the period specified in Section 15 (1) and (2), Article VIII of the Constitution. This is supplemented by Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary, requiring judges to perform all judicial duties efficiently, fairly and with reasonable promptness. A careful perusal of the transcript of stenographic notes and the Minutes of the hearing held on January 29, 2009 in Criminal Case Nos. Q-95-61294 and Q-95-62690, would clearly show that respondent indeed gave the defense ten (10) days to submit its reply to the prosecution's comment on the motion for reconsideration and, thereafter, she would resolve all pending incidents in said consolidated

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* Formerly OCA I.P.I. No. 09-3281-RTJ.

cases. As correctly observed by the OCA, the reglementary period to resolve the motion in question began to run from February 8, 2009 or after the lapse of ten days from January 29, 2009. Respondent, however, did not act on the matter and allowed a hiatus in the consolidated criminal cases. A judge cannot choose to prolong the period for resolving pending incidents and deciding cases beyond the period authorized by law. Let it be underscored that it is the sworn duty of judges to administer justice without undue delay under the time-honored precept that justice delayed is justice denied. Judges should act with dispatch in resolving pending incidents, so as not to frustrate and delay the satisfaction of a judgment. Judge Sempio Diy, having been a member of the judiciary for several years, should not have any trouble disposing the court's business and resolving motions for reconsideration within the required period. Otherwise, she should formally request this Court for an extension of the deadline to avoid administrative liability. Unfortunately, she failed to do that in these cases. Delay in resolving motions and incidents within the reglementary period of 90 days fixed by the law cannot be excused or condoned.

2. ID.; ID.; ID.; RESPONDENT'S CLAIM OF DEATH THREAT ON HER AND HER STAFF, EVEN IF REAL, WOULD NOT CONSTITUTE A VALID EXCUSE FOR HER INACTION.— Respondent's claim of death threats on her and her staff, even if real, would not constitute a valid excuse for her inaction. After all, as member of the judiciary, she must display diligence and competence amid all adversities to live up to her oath of office. Besides, when said threats were received from May to July 2009, the three-month mandatory period for resolving the motion had already expired. Accordingly, respondent cannot rely on said predicament to exonerate her from administrative liability for incurring undue delay in resolving the subject motion. Although it is true that Judge Sempio Diy finally issued a resolution denying accused Carino's motion for reconsideration on August 24, 2009 or within 30 days from the time the incident was submitted for resolution on July 30, 2009, her inaction on the motion for more than 6 months is not excused.

3. ID.; ID.; ID.; ELEMENTARY COURT MANAGEMENT PRACTICE REQUIRES JUDGES TO KEEP THEIR OWN RECORD OR NOTES OF CASES PENDING BEFORE

THEIR SALA, ESPECIALLY THOSE THAT ARE PENDING FOR MORE THAN 90 DAYS, SO THAT THEY CAN ACT ON THEM PROMPTLY AND WITHOUT DELAY.— It appears that respondent has simply forgotten about the pending motion for reconsideration in Criminal Case Nos. Q-95-61294 and Q-95-62690 after said cases became inactive due to the failure of the defense to submit its reply. The realization of the blunder came only during the semi-annual inventory of the court's cases. This situation could have been avoided had respondent adopted an effective system of record management and organization of dockets to monitor the flow of cases for prompt and efficient dispatch of the court's business. Elementary court management practice requires her to keep her own records or notes of cases pending before her sala, especially those that are pending for more than 90 days, so that she can act on them promptly and without delay.

4. ID.; ID.; ID.; ADMINISTRATIVE CASES AGAINST JUDGES SHALL ALSO BE CONSIDERED AS DISCIPLINARY PROCEEDINGS AGAINST THEM AS MEMBERS OF THE BAR.— Pursuant to A.M. No. 02-9-02-SC, this administrative case against respondent shall also be considered a disciplinary proceeding against her as a member of the bar. Violation of the basic tenets of judicial conduct embodied in the New Code of Judicial Conduct for the Philippine Judiciary and the Code of Judicial Conduct constitutes a breach of Canons 1 and 12 as well as Rules 1.03 and 12.04 of the Code of Professional Responsibility.

5. ID.; ID.; ID.; NO EVIDENCE TO SHOW ANY DUBIOUS REASON OR IMPROPER MOTIVE THAT IMPELLED RESPONDENT JUDGE TO DELAY THE RESOLUTION OF THE SUBJECT MOTION; IN THE ABSENCE OF MALICE, THE DELAY COULD ONLY BE DUE TO INADVERTENCE.— In determining the sanction to be imposed on errant magistrates, the Court considers the factual milieu of each case, the offending acts or omissions of the judges, as well as previous transgressions, if any. In the instant case, there is no evidence to show any dubious reason or improper motive that could have compelled respondent to delay the resolution of the subject motion. In fact, when respondent found out about the unresolved subject motion in the consolidated cases, she immediately ordered its submission for resolution

on July 30, 2009. In the absence of malice, the delay could only be due to inadvertence. It is significant to note that respondent resolved the motion within thirty days from its submission date which clearly showed her effort to zealously attend to her duties. Lastly, it appears that this is her first infraction and the first time for her to face an administrative complaint of this kind. Under Section 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or order constitutes a less serious charge punishable by either suspension from office without salary and other benefits for not less than one month nor more than three months or a fine of not more than ₱10,000.00 but not exceeding ₱20,000.00. However, considering that this is her first infraction due to inadvertence, We believe that admonition will suffice.

D E C I S I O N

MENDOZA, *J.*:

This is an administrative complaint for disbarment and dismissal from judiciary service filed by complainant Judge Adoracion G. Angeles *(Judge Angeles)* against respondent Hon. Maria Elisa Sempio Diy *(Judge Sempio Diy)*, Presiding Judge of the Regional Trial Court of Quezon City, Branch 225, which stemmed from consolidated Criminal Case Nos. Q-95-61294 and Q-95-62690 entitled "*People of the Philippines v. Proclyn Pacay*" and "*People of the Philippines v. P/Insp. Roberto Ganias*" respectively.

Judge Angeles charges respondent Judge Sempio Diy with Violations of Section 15 (1), Article VIII of the 1987 Constitution; Section 2, Canon 2 and Section 5 Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary; Rule 1.01 and 1.02, Canon 1 and Rule 3.05, Canon 3 of the Code of Judicial Conduct; Number 6 of the Code of Judicial Ethics; Rule 1.01, Canon 1 of the Code of Professional Responsibility; Section 4 paragraph b of Republic Act No. 6713 of the Code of Conduct and Ethical Standards for Public Officials and Employees; Falsification of Official Documents; and Dishonesty. Complainant urges the Office of the Court Administrator *(OCA)* to examine the numerous violations allegedly committed by the respondent

and to make an assessment if, indeed, she is still worthy to wear the judicial robe or, if her continued presence on the bench would unduly tarnish the image of the judiciary.[1]

In her Comment,[2] respondent Judge Sempio Diy vehemently denies the material allegations in the complaint. She claims that complainant's charges are harsh, rash and baseless, calculated merely to harass and "destroy the reputation of a younger sister in the profession."[3]

As synthesized by the OCA in its Report[4] dated May 7, 2010, the facts of the case are as follows:

> Complainant Judge Angeles alleges that she is the private complainant in the above-mentioned cases which, by order of respondent Judge Sempio-Diy dated 20 June 2008, were submitted for decision, and the promulgation of judgment was set for 11 September 2008. In a subsequent Order dated 8 September 2008, respondent Judge Sempio-Diy moved the promulgation of judgment to 17 September 2008, for the reason that she had a previously scheduled medical consultation concerning a neck ailment. Thereafter, the promulgation of judgment on 17 September 2008 was cancelled and reset to 17 October 2008, with respondent Judge Sempio-Diy citing voluminous case records and health problems as grounds to support her request before the Court of a thirty (30)-day extension.
>
> On 17 October 2008, the promulgation of judgment was once again cancelled and reset to 14 November 2008 on account of a second request for extension of time based on the ground that respondent Judge Sempio-Diy had just recently arrived from a trip to the United States where she attended a symposium on religious freedom. Following a third request for extension of time, the promulgation of judgment was reset for the last time to 12 December 2008.
>
> Finally, the Joint Decision in the subject criminal cases was promulgated on 12 December 2008, wherein all the accused, except

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[1] *Rollo*, Complaint-Affidavit, pp. 1-15.

[2] *Id.* at 63-75.

[3] *Id.* at 72.

[4] *Id.* at 275-289.

for accused SPO1 Roberto C. Carino, were acquitted. To complainant Judge Angeles, the said Decision was belatedly rendered because there was a lapse of six (6) months from the time it was submitted for resolution to the time it was promulgated. She further avers that her personal examination of the case records revealed that no requests for extension of time to decide the subject cases were made by respondent Judge Sempio-Diy. Likewise, she notes that the case records do not show that requests for extension of time, if any had indeed been made by respondent Judge Sempio-Diy, were granted by the Supreme Court. It is her opinion that such requests and Resolutions of the Supreme Court granting the same should be made integral parts of the case records.

As for the reasons proffered by respondent Judge Sempio-Diy for the repeated cancellation and resetting of the dates for promulgation of judgment, complainant Judge Angeles argues that: *(1)* respondent Judge Sempio-Diy's medical check-up could have been done on any other day that would not conflict with the scheduled promulgation; *(2)* the neck ailment was not as serious as it was made to appear because respondent Judge Sempio-Diy was able to travel abroad to attend a symposium; and *(3)* the claim that she needed time to study the voluminous case records is not a valid excuse because respondent Judge Sempio-Diy found time to travel abroad instead of attending to her pending cases.

In fine, complainant Judge Angeles is adamant in her contention that the Joint Decision in the subject criminal cases was rendered way beyond the 90-day period prescribed by the Constitution. In addition, complainant Judge Angeles raises another instance where respondent Judge Sempio-Diy is supposed to have incurred unjustifiable delay.

As it happened, convicted accused SPO1 Roberto C. Carino assailed the Joint Decision by filing an Urgent Motion for Reconsideration on 5 January 2009, which the prosecution countered in its Opposition filed on 14 January 2009. However, it was not until 30 July 2009, or more than six (6) months later, that respondent Judge Sempio-Diy issued an Order submitting the incident for resolution, "*it appearing that the accused through counsel has failed to file the necessary pleading despite the period given by the Court*." Less than a month later, or on 24 August 2009, respondent Judge Sempio-Diy resolved the pending matter by denying the Urgent Motion for Reconsideration for lack of merit.

Despite the denial of the said Urgent Motion for Reconsideration, things did not sit well for complainant Judge Angeles. For her, the Resolution dated 24 August 2009 was belatedly issued by respondent Judge Sempio-Diy. First and foremost, she contends that the incident should have been submitted for resolution upon the filing of the prosecution's Opposition on 14 January 2009. And yet, it was more than six (6) months later, or only on 30 July 2009, that respondent Judge Sempio-Diy issued the Order submitting the said incident for resolution. Secondly, complainant Judge Angeles asserts that there was no basis for the trial court to have to wait for more than six (6) months before submitting the motion for resolution considering that there exists no order in the case records directing the accused SPO1 Roberto C. Carino, through counsel, to file the necessary pleading. Asserting that there was no basis for submitting the incident for resolution only after the lapse of six (6) months, complainant Judge Angeles further contends that the Resolution issued by respondent Judge Sempio-Diy on 24 August 2009 denying the Urgent Motion for Reconsideration was likewise delayed for a total of more than seven (7) months.

To support her assertions, complainant Judge Angeles attached to her COMPLAINT a Certification issued by Benedict S. Sta. Cruz, Branch Clerk of Court of RTC, Branch 225, Quezon City, wherein the latter attested that, "*based on the record of People vs. Proclyn Pacay, et al., Criminal Case Nos. Q-95-61294 and Q-95-62690, it appears that there is no order from the Court directing the defense to file a reply to the Comment/Opposition (to the Motion for Reconsideration) filed by the prosecution on January 14, 2009*." She also points out that there appears to be an irregularity in the face of the Order submitting the incident for resolution. In particular, she refers to the date of its issuance — "July 30, 2009"—which is written in a different font when compared to the rest of the contents of the said Order. She, therefore, contends that the said date was "*merely typewritten in lieu of another date which was snowpaked*."

By failing to decide/resolve the subject cases and the Urgent Motion for Reconsideration within the period mandated by law and jurisprudence, as well as in falsifying official documents, complainant Judge Angeles now stresses, respondent Judge Sempio-Diy violated the pertinent provisions of the Constitution, New Code of Judicial Conduct, Code of Judicial Ethics, Code of Professional Responsibility, and the Code of Conduct and Ethical Standards for Public Officials.

For her part, respondent Judge Sempio-Diy belies the accusations hurled at her by complainant Judge Angeles in the latter's COMPLAINT. In her COMMENT dated 2 December 2009, respondent Judge Sempio-Diy counters that she decided the subject cases in due time and within the extended period granted by the Supreme Court. She maintains that the orders resetting the promulgation of judgment were issued in good faith and in the interest of full transparency, pursuant to her request to decide the subject cases expeditiously.

For starters, she notes that she merely inherited the subject cases which had already been previously handled by three (3) other judges from the time they were filed in 1995. Thus, the case records were voluminous.

For another, the first resetting of the promulgation of judgment from 11 September to 17 September 2008 was occasioned by her illness, which assertion she substantiated by way of a Medical Certificate. She points out that the setting of the promulgation of judgment on 17 September 2008 is still within the Constitutionally-prescribed 90-day period for deciding the subject cases.

As for the three (3) subsequent re-settings, she avers that she timely asked for extensions of the period, all of which were granted by the Supreme Court. To support her claim that she did not incur delay in the promulgation of judgment, she appended to her COMMENT certified true copies of her first and second letters/requests addressed to the then Assistant Court Administrator, Jesus Edwin A. Villasor (now Deputy Court Administrator) and other related documents. These requests were favorably considered by the Court and she was granted an extension of a total of ninety (90) days from 18 September 2008.

She likewise attached to her COMMENT a copy of her third letter/request to prove that this was filed prior to the lapse of the original 90-day extended period granted to her. In fine, she insists that there was no unjustified delay when the Joint Decision was finally promulgated on 12 December 2008 as the same was still within the original 90-day extended period reckoned from 18 September 2008. The Court's granting of her third request for an additional thirty (30) days in a Resolution dated 16 February 2009 had, by then, become moot and academic.

While she admits that her letters/requests for extension and the Supreme Court Resolutions granting the same were not attached to the voluminous records of the subject cases, she nevertheless manifests that these were kept in a separate folder.

With regard to the Urgent Motion for Reconsideration, she points out that the delay was inadvertently incurred in good faith. During the hearing of the said motion on 29 January 2009, the request of the defense for time to file the necessary pleadings was granted, for which reason, she says, the said motion could not yet be submitted for resolution. She deemed it prudent to give the parties a reasonable period of time within which to submit their adversarial pleadings. To substantiate this contention, respondent Judge Sempio-Diy attached to her COMMENT the transcript of stenographic notes taken on that day and the Minutes of the proceedings of the same day.

In the light of the foregoing, respondent Judge Sempio-Diy discredits the import of the Certification issued by the Branch Clerk of Court, Benedict S. Sta. Cruz, by arguing that, while there is no order appearing in the case records directing accused SPO1 Carino to file his Reply to the prosecution's Comment to his Urgent Motion for Reconsideration, the said directive appears in the Minutes of the hearing conducted on 29 January 2009. She likewise notes that during the said hearing, the said Branch Clerk of Court was not present.

Respondent Judge Sempio-Diy likewise attributes the inadvertent delay to the "*unfortunate crises*" that befell her, her mother, and the court's personnel sometime in May to July of 2009. She reported to the Office of the Court Administrator that they received a series of death threats which caused, among others, disorientation. Thus, it was only on 30 July 2009, after the semi-annual inventory, that an Order submitting the matter for resolution was issued. She stresses that the incident was resolved within thirty (30) days from its submission. As for the "*snowpaked*" correction of the date of the said Order, she avers that this was simply due to a typographical error.[5]

Complainant Judge Angeles filed her Reply to respondent's Comment and, thereafter, respondent Judge Sempio Diy filed her Rejoinder in amplification of their respective claims. Later, complainant filed her Sur-Rejoinder on February 9, 2010 while

[5] *Id.* at 275-281.

respondent filed her Reply to the Sur-Rejoinder on February 18, 2010.

In its evaluation, the OCA found that Judge Sempio Diy cannot be held guilty of unreasonable delay in rendering the Joint Decision in Criminal Case Nos. Q-95-61294 and Q-95-62690 given her seasonably-filed requests for extension of time. The requests were all granted by this Court in the November 24, 2008 Resolution, giving respondent a total extension period of ninety (90) days from September 18, 2008. The OCA, however, opined that respondent should be administratively sanctioned for incurring delay in the resolution of accused Carino's Urgent Motion for Reconsideration.

The OCA recommended that the case be re-docketed as a regular administrative matter against Judge Sempio Diy and that she be fined in the amount of ₱2,000.00 for her delayed action on a motion for reconsideration with a stern warning that a repetition of the same or similar act would be dealt with more severely.[6]

After a judicious review of the records of the case, this Court determines that the findings of the OCA are well-taken. However, We modify the recommended disposition in light of the circumstances of the case.

The Court finds no evidence to sustain the charges of delay against Judge Sempio Diy in rendering the Joint Decision in the consolidated Criminal Case Nos. Q-95-61294 and Q-95-62690. It is the stance of the complainant that Judge Sempio Diy merely sat on the cases for an unreasonable length of time and failed to resolve them within the constitutionally prescribed 90-day period. This constituted gross inefficiency warranting the imposition of administrative sanctions. Judge Angeles accuses respondent of concocting requests for extension and making it appear that these requests were granted by this Court. Complainant avers that she perused the records of the consolidated criminal cases but respondent's alleged requests for extension and the Court's Resolutions allowing them were nowhere to be found.

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[6] *Id.* at 289.

Complainant's contentions fail.

Records reveal that Judge Sempio Diy timely sought for three successive extensions[7] of the period to decide the consolidated criminal cases. All requests were favorably considered by this Court.[8] Respondent was granted a total extension period of ninety (90) days to be reckoned from September 18, 2008 or until December 18, 2008. So, the promulgation of Joint Decision on December 12, 2008 was made well within the 90-day extension period. Complainant should have first verified the veracity and accuracy of her allegations from the records of Branch 225, this Court and the OCA, before hurling accusations of dishonesty and slothful conduct against respondent. Truly, respondent was charged with a litany of imagined sins relative to her alleged undue delay in deciding the subject consolidated criminal cases without sufficient proof.

We hold, however, that there was indeed delay in resolving accused Carino's Urgent Motion for Reconsideration filed on January 5, 2009.

Respondent Judge Sempio Diy claims that the delay in submitting accused's motion for reconsideration was due to inadvertence and without bad faith on her part. She explains that she opted to wait for the defense to file its reply to the prosecution's comment on the motion for reconsideration because the offense of which accused was convicted was serious and his liberty was at stake. She adds that the death threats she and the members of her judicial staff received from May to July 2009, caused them disorientation and contributed further to the delay in the resolution of the subject motion. She readily admits that it was only after the semi-annual inventory that the pending incidents in the consolidated criminal cases were considered submitted for resolution in the July 30, 2009 Order.

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[7] *Id.*, September 16, 2008 letter-request for 1st extension of 30 days, p. 79; October 16, 2008 letter-request for 2nd extension of 30 days, p. 80; and November 10, 2008 final letter-request, p. 97.

[8] *Id.*, Resolution dated November 24, 2008, pp. 95-96; and Resolution dated February 16, 2009, pp. 135-136.

Rule 3.05, Canon 3 of the Code of Judicial Conduct[9] admonishes all judges to dispose of the court's business promptly and decide cases within the period specified in Section 15 (1) and (2), Article VIII of the Constitution.[10] This is supplemented by Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary, requiring judges to perform all judicial duties efficiently, fairly and with reasonable promptness.[11]

A careful perusal of the transcript of stenographic notes[12] and the Minutes[13] of the hearing held on January 29, 2009 in Criminal Case Nos. Q-95-61294 and Q-95-62690, would clearly show that respondent indeed gave the defense ten (10) days to submit its reply to the prosecution's comment on the motion for reconsideration and, thereafter, she would resolve all pending incidents in said consolidated cases. As correctly observed by the OCA, the reglementary period to resolve the motion in question began to run from February 8, 2009 or after the lapse of ten days from January 29, 2009. Respondent, however, did not act on the matter and allowed a hiatus in the consolidated criminal

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[9] The New Code of Judicial Conduct for the Philippine Judiciary (A.M. No. 03-05-01-SC) provides: "This Code, which shall hereafter be referred to as the *New Code of Judicial Conduct for the Philippine Judiciary*, supersedes the Canons of Judicial Ethics and the Code of Judicial Conduct heretofore applied in the Philippines **to the extent that the provisions or concepts therein are embodied in this Code: *Provided, however,* that in case of deficiency or absence of specific provisions in this New Code,** the Canons of Judicial Ethics and **the Code of Judicial Conduct shall be applicable in a suppletory character.**"

[10] *Acuzar v. Ocampo*, 469 Phil. 479, 485 (2004). Section 15 (1) and (2) of the Constitution provides: "Section 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all lower courts. "(2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, memorandum required by the Rules of Court or by the court itself."

[11] A.M. No. 03-05-01-SC dated April 27, 2004.

[12] *Rollo*, pp. 149-152.

[13] *Id.* at 153.

cases. A judge cannot choose to prolong the period for resolving pending incidents and deciding cases beyond the period authorized by law. Let it be underscored that it is the sworn duty of judges to administer justice without undue delay under the time-honored precept that justice delayed is justice denied. Judges should act with dispatch in resolving pending incidents, so as not to frustrate and delay the satisfaction of a judgment.[14]

Judge Sempio Diy, having been a member of the judiciary for several years, should not have any trouble disposing the court's business and resolving motions for reconsideration within the required period. Otherwise, she should formally request this Court for an extension of the deadline to avoid administrative liability. Unfortunately, she failed to do that in these cases. Delay in resolving motions and incidents within the reglementary period of 90 days fixed by the law cannot be excused or condoned.[15]

Respondent's claim of death threats on her and her staff, even if real, would not constitute a valid excuse for her inaction. After all, as member of the judiciary, she must display diligence and competence amid all adversities to live up to her oath of office. Besides, when said threats were received from May to July 2009, the three-month mandatory period for resolving the motion had already expired. Accordingly, respondent cannot rely on said predicament to exonerate her from administrative liability for incurring undue delay in resolving the subject motion. Although it is true that Judge Sempio Diy finally issued a resolution[16] denying accused Carino's motion for reconsideration on August 24, 2009 or within 30 days from the time the incident was submitted for resolution on July 30, 2009, her inaction on the motion for more than 6 months is not excused.

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[14] *Office of the Court Administrator v. Judge Marcelino L. Sayo, Jr.*, 431 Phil. 413, 431 (2002).

[15] *Office of the Court Administrator v. Judge Henry B. Avelino*, MTJ No. 05-1606, December 9, 2005, 477 SCRA 9, 17.

[16] *Rollo*, pp. 57-59.

It appears that respondent has simply forgotten about the pending motion for reconsideration in Criminal Case Nos. Q-95-61294 and Q-95-62690 after said cases became inactive due to the failure of the defense to submit its reply. The realization of the blunder came only during the semi-annual inventory of the court's cases. This situation could have been avoided had respondent adopted an effective system of record management and organization of dockets to monitor the flow of cases for prompt and efficient dispatch of the court's business. Elementary court management practice requires her to keep her own records or notes of cases pending before her sala, especially those that are pending for more than 90 days, so that she can act on them promptly and without delay. In *Ricolcol v. Judge Camarista*,[17] the Court declared:

> A judge ought to know the cases submitted to her for decision or resolution and is expected to keep her own record of cases so that she may act on them promptly. It is incumbent upon her to devise an efficient recording and filing system in her court so that no disorderliness can affect the flow of cases and their speedy disposition. Proper and efficient court management is as much her responsibility. She is the one directly responsible for the proper discharge of her official functions.

The Court reminds the respondent of her duty to closely supervise and monitor the monthly docket inventories to forestall future occurrences of this nature. Pertinently, the Court held in *Gordon v. Judge Lilagan*:[18]

> The physical inventory of cases is instrumental to the expeditious dispensation of justice. Although this responsibility primarily rests in the presiding judge, it is shared with the court staff. This Court has consistently required Judges for a "continuous inventory of cases on a monthly basis so that a trial judge is aware of the status of each case. With the assistance of the branch clerk of court, a checklist should be prepared indicating the steps to be taken to keep the cases moving. In *Juan v. Arias* [72 SCRA 404 (1976)], the Court

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[17] 371 Phil. 399, 406 (1999).

[18] 414 Phil. 221, 230-231 (2001).

underscored the importance of this physical inventory stressing "it is only by this that the judge can keep himself abreast of the status of the pending cases and informed that everything is in order in his court."

Pursuant to A.M. No. 02-9-02-SC,[19] this administrative case against respondent shall also be considered a disciplinary proceeding against her as a member of the bar.[20] Violation of the basic tenets of judicial conduct embodied in the New Code of Judicial Conduct for the Philippine Judiciary and the Code of Judicial Conduct constitutes a breach of Canons 1[21] and 12[22] as well as Rules 1.03[23] and 12.04[24] of the Code of Professional Responsibility.

In determining the sanction to be imposed on errant magistrates, the Court considers the factual milieu of each case, the offending acts or omissions of the judges, as well as previous transgressions, if any. In the instant case, there is no evidence to show any dubious reason or improper motive that could have compelled respondent to delay the resolution of the subject motion. In fact, when respondent found out about the unresolved subject motion in the consolidated cases, she immediately ordered its submission for resolution on July 30, 2009. In the absence of

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[19] Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan, Judges of Regular and Special Courts, and Court Officials Who Are Lawyers as Disciplinary Proceedings Against Them Both as Officials and as Members of the Philippine Bar dated September 17, 2002.

[20] *Juan de la Cruz (A Concerned Citizen of Legazpi City) v. Judge Carretas*, A.M. No. RTJ-07-2043, September 5, 2007, 532 SCRA 218, 232.

[21] Canon 1 – A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and for legal processes.

[22] Canon 12 – A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

[23] Rule 1.03 – A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

[24] Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes.

malice, the delay could only be due to inadvertence. It is significant to note that respondent resolved the motion within thirty days from its submission date which clearly showed her effort to zealously attend to her duties. Lastly, it appears that this is her first infraction and the first time for her to face an administrative complaint of this kind.

Under Section 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or order constitutes a less serious charge punishable by either suspension from office without salary and other benefits for not less than one month nor more than three months or a fine of not more than ₱10,000.00 but not exceeding ₱20,000.00. However, considering that this is her first infraction due to inadvertence, We believe that admonition will suffice.

WHEREFORE, respondent Judge Maria Elisa Sempio Diy is found to have been in delay in the rendition of an order in Criminal Case Nos. Q-95-61294 and Q-95-62690 and is hereby *ADMONISHED* to be more circumspect in observing the reglementary period for disposing of motions.

SO ORDERED.

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

[**] Designated as additional member in lieu of Justice Roberto A. Abad per raffle dated September 20, 2010.

SECOND DIVISION

[G.R. No. 149624. September 29, 2010]

SPOUSES CONRADO ANTONIO and AVELYN ANTONIO, *petitioners, vs.* **JULITA SAYMAN *VDA. DE* MONJE, substituted by her heirs, namely: ANGELINA MONJE-VILLAMOR, LUZVISMINDA MONJE-CORTEL, MARRIETA MONJE-ORTICO, LEOPOLDO MONJE, CONCEPCION SAYMAN-MONJE, and ROLINDA MONJE-CALO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF *RES JUDICATA*; DEFINED; ELUCIDATED.— *Res judicata* is defined as "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." According to the doctrine of *res judicata*, an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. To state simply, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits **on all points and matters determined in the former suit**.

2. ID.; ID.; ID.; ID.; 2 ASPECTS OF *RES JUDICATA*; EXPLAINED.— The principle of *res judicata* is applicable by way of (1) "bar by prior judgment" and (2) "conclusiveness of judgment." This Court had occasion to explain the difference between these two aspects of *res judicata* as follows: There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the

parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal. But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, **any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same**. Stated differently, conclusiveness of judgment finds application **when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction**. The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively-settled fact or question cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action. Thus, only the identities of parties and issues are required for the operation of the principle of conclusiveness of judgment.

3. ID.; ID.; ID.; ID.; NO IDENTITY OF PARTIES AND ISSUES IN CASE AT BAR.— There is no question that there is identity of parties in Civil Case No. 007-125 and Civil Case No. 506. However, as to identity of issues, a perusal of the records and other pleadings would show that the issue raised in Civil Case No. 007-125 is whether the sale to petitioners of the 7,500 square meter portion of Lot No. 1 being contested by respondents is valid. On the other hand, in Civil Case No. 506, the issues are whether petitioners were deprived of possession of the remaining 8,403 square meter portion of Lot No. 1 which was validly sold to them and whether they are entitled to an accounting of the proceeds of the copra harvested from their

property which was supposedly appropriated by respondents. The Court finds that there is no identity of issues as the issue raised in Civil Case No. 007-125 is different from, and does not overlap with, the issue raised in Civil Case No. 506.

4. ID.; ID.; ID.; ID.; CAUSES OF ACTION IN THE TWO CASES ARE NOT IDENTICAL; "ABSENCE OF INCONSISTENCY TEST" AND "SAME EVIDENCE TEST": APPLIED.— Respondents insist in their Motion to Dismiss filed with the RTC that the cause of action in Civil Case No. 506 is barred by the prior judgment rendered in Civil Case No. 007-125. The Court agrees, however, with the CA that the causes of action in these cases are not identical. The Court has previously employed various tests in determining whether or not there is identity of causes of action as to warrant the application of the principle of *res judicata*. One test of identity is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions. In the instant case, the reliefs prayed for in Civil Case No. 506 are the payment of a sum representing the proceeds of the copra supposedly harvested from petitioners' property and purportedly misappropriated by respondents. Petitioners also pray for the award of moral and exemplary damages, as well as attorney's fees and litigation expenses. In the event that a judgment is rendered in favor of herein petitioners, who are the complainants in Civil Case No. 506, the Court finds no possible inconsistency in the judgment sought in Civil Case No. 506 with the judgment rendered in Civil Case No. 007-125. The more common approach in ascertaining identity of causes of action is the "same evidence test," whereby the following question serves as a sufficient criterion: "would the same evidence support and establish both the present and former causes of action?" If the answer is in the affirmative, then the prior judgment is a bar to the subsequent action; conversely, it is not. In the instant case, it is unmistakable that the pieces of evidence that would back up the cause of action in Civil Case No. 007-125 are different from the set of evidence that would prove the cause of action in Civil Case No. 506. Aside from the "absence of inconsistency test" and "same evidence test," we have also ruled that a previous judgment operates as a bar to a subsequent

one when it had "touched on [a] matter already decided," or if the parties are in effect "litigating for the same thing." A reading of the decisions of the lower and appellate courts in Civil Case No. 007-125 would show that there were neither discussions nor disposition of the issues raised in Civil Case No. 506.

5. ID.; ID.; ID.; ID.; SINCE THERE IS NO IDENTITY OF SUBJECT MATTER BETWEEN THE TWO CASES, IT IS BUT LOGICAL TO CONCLUDE THAT THERE IS LIKEWISE NO IDENTITY OF CAUSES OF ACTION.— The Court, nevertheless, does not agree with the conclusion of the RTC and the CA that Civil Case No. 007-125 and Civil Case No. 506 involve the same subject matter. The final and executory judgment in Civil Case No. 007-125 cannot bar the filing of Civil Case No. 506, since these cases involve entirely different subject matters. The bone of contention in Civil Case No. 007-125 is confined to the 7,500 square meter portion of Lot No. 1 bought by the predecessor-in-interest of respondents, while the subject matter in Civil Case No. 506 is the remaining 8,403 square meter parcel of the same lot. Since there is no identity of subject matter between the two cases, it is but logical to conclude that there is likewise no identity of causes of action. Both the questioned rulings of the RTC and the CA may have arisen from an apparent confusion that the whole of Lot No. 1, consisting of 15,903 square meters, is owned by respondents. It is clear, however, from the December 7, 1992 ruling of this Court in G.R. No. 69696 that respondents' predecessor-in-interest acquired only a 7,500 square meter portion of Lot No. 1 and not the entirety thereof and that the remaining 8,403 square meters are still owned by petitioners.

6. ID.; ID.; ID.; ID.; PLEADINGS; COMPULSORY COUNTERCLAIM; THE CLAIMS IN CASE AT BAR DOES NOT TAKE THE NATURE OF COMPULSORY COUNTERCLAIM; PETITIONERS' CLAIMS FOR ACCOUNTING AND DAMAGES ARE MERELY PERMISSIVE AND ARE ESSENTIALLY INDEPENDENT CLAIMS WHICH MAY BE FILED SEPARATELY.— While the claims of petitioners in Civil Case No. 506 may be an offshoot of the controversy between them and respondents in Civil Case No. 007-125, these claims do not take the nature of a compulsory counterclaim which are barred if not set up

in petitioners' answer to respondents' complaint in Civil Case No. 007-125. In the recent case of *Manuel Bungcayao, Sr., etc. v. Fort Ilocandia Property Holdings and Development Corporation*, this Court had occasion to reiterate its discussion on the nature of a compulsory counterclaim, thus: A compulsory counterclaim is any claim for money or any relief, which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of the plaintiff's complaint. It is compulsory in the sense that it is within the jurisdiction of the court, does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdicition, and will be barred in the future if not set up in the answer to the complaint in the same case. Any other counterclaim is permissive. The Court has ruled that the compelling test of compulsoriness characterizes a counterclaim as compulsory if there should exist a logical relationship between the main claim and the counterclaim. The Court further ruled that there exists such a relationship when conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court; when the multiple claims involve the same factual and legal issues; or when the claims are offshoots of the same basic controversy between the parties. The criteria to determine whether the counterclaim is compulsory or permissive are as follows: (a) Are issues of fact and law raised by the claim and by the counterclaim largely the same? (b) Would *res judicata* bar a subsequent suit on defendant's claim, absent the compulsory rule? (c) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim? (d) Is there any logical relations between the claim and the counterclaim? A positive answer to all four questions would indicate that the counterclaim is compulsory. In the instant case, the answer to all four questions is in the negative. As discussed earlier, the subject matter, causes of action and the issues in Civil Case No. 007-125 and Civil Case No. 506 are entirely different. Thus, petitioners' claims for accounting and damages in the latter case are merely permissive. These are essentially independent claims which may be filed separately from Civil Case No. 007-125. Hence, the Court finds that there is no *res judicata* in the present case.

APPEARANCES OF COUNSEL

Silvanio T. Liza for petitioners.

D E C I S I O N

PERALTA, *J.*:

Assailed in the present petition are the Decision[1] and Resolution[2] of the Court of Appeals (CA) dated May 4, 2001 and August 3, 2001, respectively.

The facts of the case, as summarized by the CA, are as follows:

Spouses Catalino Manguiob and Andrea Pansaon were the original owners of the subject parcel of coconut land, consisting of 15,903 square meters, particularly known as Lot No. 1 covered by Original Certificate of Title No. 1020 of the Register of Deeds of Davao.

On 02 September 1962, Andrea Pansaon who survived her husband Catalino Manguiob, together with some other heirs, sold to Macedonio Monje Seven Thousand Five Hundred (7,500) square meters only of the aforesaid property. The said deed of absolute sale was duly notarized by Notary Public Ricardo Reyes and entered in his notarial book as Doc. No. 48; page 10; Book No. 5; Series of 1962.

Macedonio Monje immediately took possession thereof and constructed a house worth ₱30,000.00.

On 16 January 1967, the heirs of spouses Catalino Manguiob and Andrea Pansaon who also died, sold the subject property which was already sold to Macedonio Monje in 1962, in favor of Nicanor Manguiob and Carolina V. Manguiob.

Immediately thereafter, spouses Nicanor Manguiob and Carolina V. Manguiob had executed an absolute deed of sale in favor of the former's sister-in-law, Avelyn B. Antonio, the entire Lot No. [1] consisting of 15,903 square meters. The sale was entered in the

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[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Eubulo G. Verzola and Marina L. Buzon, concurring; *rollo*, pp. 70-79.

[2] *Id*. at 30-31.

notarial book of Notary Public Juanito T. Hernandez as Doc. No. 645; Page 31; Book 5, Series of 1967.

Macedonio Monje knew it only on 11 August 1967 when he received a letter from Avelyn B. Antonio, informing him that she is now the registered owner of the subject property under a new Transfer Certificate of Title No. TCT No. T-9643.

Aggrieved, Macedonio Monje filed on 12 October 1967 before the CFI of Baganga, Davao Oriental, a complaint for the annulment of the deed of sale between the heirs of Catalino Manguiob and Carolina Balanay/Nicanor Manguiob, as well as the subsequent deed of absolute sale by the latter in favor [of] Avelyn Antonio and the cancellation of TCT No. T-9643, docketed as Civil Case No. 007-125.

On 27 August 1981, the aforesaid court rendered a decision the decretal portion thereof reads as follows:

> WHEREFORE, judgment is hereby rendered, declaring the 2nd and 3rd deeds of sale of the property in question null and void and transfer certificate of title No. 9643 likewise null and void; ordering the defendants jointly and solidarily to pay the plaintiff moral damages of ₱30,000.00 and actual damages of ₱20,000.00, with legal interest until the amount is fully paid; and to pay the costs.
>
> Let a copy of this decision be served on the Register of Deeds at Mati, Davao Oriental, for appropriate action.
>
> SO ORDERED.

Plaintiff-appellants, Spouses Antonio appealed the above-mentioned decision all the way to the Supreme Court. On 07 December 1992, the Supreme Court in G.R. No. 69696, rendered a decision, the pertinent portion of which states as follows:

> We find that while the principle of *res judicata* is better disregarded if its application would involve the sacrifice of justice to technicality; to so disregard it now and reopen the case would further delay its disposition. However, the lower court should take note of its erroneous order to deliver to Monje an area larger than what he bought from the heirs of Manguiob and claimed in the action he had filed, in the eventual execution of its decision. In the same way that the power of

> the court in the execution of its judgment extends only over properties belonging to the judgment debtor, the court below may not, in the execution of its decision of August 27, 1981, deliver to Monje the entire area covered by TCT No. T-9643 as it is more than double that of the property he had bought. (pp. 15-16, *rollo*).

Prescinding from the decision of the Supreme Court, plaintiff-appellants [herein petitioners] filed a case for a sum of money, accounting of the proceeds of the copra, damages and attorney's fees against herein defendant-appellees, docketed as Civil Case No. 506 before the Regional Trial Court of Baganga, Davao Oriental, Branch 7.

In the aforesaid complaint, plaintiffs-appellants alleged, among others that:

> 8. That the late Macedonio Monje has been in possession of this 15,903 square meters coconut land covered by TCT No. T-9643 since 1967 which possession and enjoyment thereof has been continued by the herein defendants when Monje died;
>
> 9. That as earlier pointed out, Monje is only entitled to 7,500 square meters of this subject property, hence, plaintiffs were deprived of the possession and proceeds of the copra of their property consisting of 8,403 square meters since 1967 (the year plaintiffs became the owner of this property) continuously up to the present.
>
> 10. That the possession by Macedonio Monje and the defendants of the whole 15,903 square meters of the aforesaid land and their appropriation of the proceeds of the copra was made in bad faith for they know very well that they are only entitled to 7,500 square meters portion of the land which is the only area they bought from the heirs of Catalino Manguiob. (Please refer to Annex 'B')
>
> x x x x x x x x x
>
> 12. That since 1967 up to the present or a period of 27 years, Monje and the defendants appropriated unto themselves the proceeds of the copra of the land belonging to the plaintiffs (8,403 square meters area) in the estimated net amount of ₱420,714.00);
>
> x x x x x x x x x

Defendants-appellees [herein respondents], instead of filing an answer to the aforesaid complaint had opted to file a motion to dismiss on the grounds of *res judicata* and violation of Supreme Court Circular No. 04-94 on non-forum shopping. x x x[3]

On December 16, 1994, the Regional Trial Court (RTC) issued an Order dismissing herein petitioners' complaint on the ground of *res judicata*.[4]

Aggrieved by the Order of the RTC, petitioners filed an appeal with the CA. Despite due notice, respondents failed to file their appellees' brief. Consequently, the CA deemed the case submitted for decision without the said brief.

On May 4, 2001, the CA rendered its presently assailed Decision affirming the judgment of the RTC and dismissing the appeal of herein petitioners.

Petitioners filed a Motion for Reconsideration, but the same was dismissed by the CA in its Resolution dated August 3, 2001.

Hence, the instant petition raising the lone issue of whether or not the CA erred in applying the principle of *res judicata* with respect to Civil Case No. 007-125 and Civil Case No. 506.[5]

At the outset, the Court notes that respondents failed to file their comment on the present petition. As borne by the records, several Court resolutions addressed to the respondents were returned either unserved or unheeded. Thus, the Court dispensed with the filing of respondents' comment.

Going to the merits of the case, *res judicata* is defined as "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment."[6] According to the doctrine of *res judicata*, an existing final judgment or decree rendered

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[3] *Rollo*, pp. 71-75.

[4] *Id*. at 121-123.

[5] *Id*. at 29.

[6] *Spouses Fernando Torres and Irma Torres v. Amparo Medina and Ex-Officio Sheriff of the RTC of Quezon City*, G.R. No. 166730, March 10, 2010.

on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[7] To state simply, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits **on all points and matters determined in the former suit**.[8]

The principle of *res judicata* is applicable by way of (1) "bar by prior judgment" and (2) "conclusiveness of judgment." This Court had occasion to explain the difference between these two aspects of *res judicata* as follows:

> There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.
>
> But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, **any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same**.[9]

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[7] *Id*.

[8] *Agustin v. Delos Santos*, G.R. No. 168139, January 20, 2009, 576 SCRA 576, 585.

[9] *Id* at 585-586. (Emphasis supplied.)

Stated differently, conclusiveness of judgment finds application **when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction**.[10] The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively-settled fact or question cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action.[11] Thus, only the identities of parties and issues are required for the operation of the principle of conclusiveness of judgment.[12]

In the present case, there is no question that there is identity of parties in Civil Case No. 007-125 and Civil Case No. 506.

However, as to identity of issues, a perusal of the records and other pleadings would show that the issue raised in Civil Case No. 007-125 is whether the sale to petitioners of the 7,500 square meter portion of Lot No. 1 being contested by respondents is valid. On the other hand, in Civil Case No. 506, the issues are whether petitioners were deprived of possession of the remaining 8,403 square meter portion of Lot No. 1 which was validly sold to them and whether they are entitled to an accounting of the proceeds of the copra harvested from their property which was supposedly appropriated by respondents. The Court finds that there is no identity of issues as the issue raised in Civil Case No. 007-125 is different from, and does not overlap with, the issue raised in Civil Case No. 506.

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[10] *Hacienda Bigaa, Inc. v. Epifanio V. Chavez*, G.R. No. 174160, April 20, 2010; *Chris Garments Corporation v. Sto. Tomas*, G.R. No. 167426, January 12, 2009, 576 SCRA 13, 21-22; *Heirs of Rolando N. Abadilla v. Galarosa*, G.R. No. 149041, July 12, 2006, 494 SCRA 675, 688-689.

[11] *Id*.

[12] *Id*.

Respondents insist in their Motion to Dismiss filed with the RTC that the cause of action in Civil Case No. 506 is barred by the prior judgment rendered in Civil Case No. 007-125.

The Court agrees, however, with the CA that the causes of action in these cases are not identical.

The Court has previously employed various tests in determining whether or not there is identity of causes of action as to warrant the application of the principle of *res judicata*. One test of identity is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment.[13] If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions.[14] In the instant case, the reliefs prayed for in Civil Case No. 506 are the payment of a sum representing the proceeds of the copra supposedly harvested from petitioners' property and purportedly misappropriated by respondents. Petitioners also pray for the award of moral and exemplary damages, as well as attorney's fees and litigation expenses. In the event that a judgment is rendered in favor of herein petitioners, who are the complainants in Civil Case No. 506, the Court finds no possible inconsistency in the judgment sought in Civil Case No. 506 with the judgment rendered in Civil Case No. 007-125.

The more common approach in ascertaining identity of causes of action is the "same evidence test," whereby the following question serves as a sufficient criterion: "would the same evidence support and establish both the present and former causes of action?" If the answer is in the affirmative, then the prior judgment is a bar to the subsequent action; conversely, it is not.[15] In the instant case, it is unmistakable that the pieces of evidence that would back up the cause of action in Civil Case No. 007-125 are different from the set of evidence that would prove the cause of action in Civil Case No. 506.

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[13] *Spouses Torres v. Medina, supra* note 6.

[14] *Agustin v. Delos Santos, supra* note 8, at 588-589.

[15] *Id.* at 590.

Aside from the "absence of inconsistency test" and "same evidence test," we have also ruled that a previous judgment operates as a bar to a subsequent one when it had "touched on [a] matter already decided," or if the parties are in effect "litigating for the same thing."[16] A reading of the decisions of the lower and appellate courts in Civil Case No. 007-125 would show that there were neither discussions nor disposition of the issues raised in Civil Case No. 506.

The Court, nevertheless, does not agree with the conclusion of the RTC and the CA that Civil Case No. 007-125 and Civil Case No. 506 involve the same subject matter.

The final and executory judgment in Civil Case No. 007-125 cannot bar the filing of Civil Case No. 506, since these cases involve entirely different subject matters. The bone of contention in Civil Case No. 007-125 is confined to the 7,500 square meter portion of Lot No. 1 bought by the predecessor-in-interest of respondents, while the subject matter in Civil Case No. 506 is the remaining 8,403 square meter parcel of the same lot. Since there is no identity of subject matter between the two cases, it is but logical to conclude that there is likewise no identity of causes of action.[17]

Both the questioned rulings of the RTC and the CA may have arisen from an apparent confusion that the whole of Lot No. 1, consisting of 15,903 square meters, is owned by respondents. It is clear, however, from the December 7, 1992 ruling of this Court in G.R. No. 69696[18] that respondents' predecessor-in-interest acquired only a 7,500 square meter portion of Lot No. 1 and not the entirety thereof and that the remaining 8,403 square meters are still owned by petitioners.

Lastly, while the claims of petitioners in Civil Case No. 506 may be an offshoot of the controversy between them and respondents in Civil Case No. 007-125, these claims do not

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[16] *Id.* at 591.

[17] *Id.* at 587.

[18] Entitled, *Antonio v. Intermediate Appellate Court.*

take the nature of a compulsory counterclaim which are barred if not set up in petitioners' answer to respondents' complaint in Civil Case No. 007-125.

In the recent case of *Manuel Bungcayao, Sr., etc. v. Fort Ilocandia Property Holdings and Development Corporation*,[19] this Court had occasion to reiterate its discussion on the nature of a compulsory counterclaim, thus:

> A compulsory counterclaim is any claim for money or any relief, which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of the plaintiff's complaint. It is compulsory in the sense that it is within the jurisdiction of the court, does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdicition, and will be barred in the future if not set up in the answer to the complaint in the same case. Any other counterclaim is permissive.
>
> The Court has ruled that the compelling test of compulsoriness characterizes a counterclaim as compulsory if there should exist a logical relationship between the main claim and the counterclaim. The Court further ruled that there exists such a relationship when conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court; when the multiple claims involve the same factual and legal issues; or when the claims are offshoots of the same basic controversy between the parties.
>
> The criteria to determine whether the counterclaim is compulsory or permissive are as follows:
>
> (a) Are issues of fact and law raised by the claim and by the counterclaim largely the same?
>
> (b) Would *res judicata* bar a subsequent suit on defendant's claim, absent the compulsory rule?
>
> (c) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim?

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[19] G.R. No. 170483, April 19, 2010.

(d) Is there any logical relations between the claim and the counterclaim?

A positive answer to all four questions would indicate that the counterclaim is compulsory.

In the instant case, the answer to all four questions is in the negative. As discussed earlier, the subject matter, causes of action and the issues in Civil Case No. 007-125 and Civil Case No. 506 are entirely different. Thus, petitioners' claims for accounting and damages in the latter case are merely permissive. These are essentially independent claims which may be filed separately from Civil Case No. 007-125.

Hence, the Court finds that there is no *res judicata* in the present case.

WHEREFORE, the instant petition is *GRANTED*. The Decision of the Court of Appeals dated May 4, 2001 and its Resolution dated August 3, 2001 in CA-G.R. CV No. 49356 are *REVERSED* and *SET ASIDE*. The case is *REMANDED* for appropriate proceedings to the court of origin, Regional Trial Court, Branch 7, of Baganga, Davao Oriental, which is *DIRECTED* to decide on the merits *WITH REASONABLE DISPATCH*.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.*, concur.

SECOND DIVISION

[G.R. No. 155109. September 29, 2010]

C. ALCANTARA & SONS, INC., *petitioner, vs.* **COURT OF APPEALS, LABOR ARBITER ANTONIO M. VILLANUEVA, LABOR ARBITER ARTURO L. GAMOLO, SHERIFF OF NLRC RAB-XI-DAVAO CITY, NAGKAHIUSANG MAMUMUO SA ALSONS-SPFL (NAMAAL-SPFL), FELIXBERTO IRAG, JOSHUA BARREDO, ERNESTO CUARIO, EDGAR MONDAY, EDILBERTO DEMETRIA, HERMINIO ROBILLO, ROMULO LUNGAY, MATROIL DELOS SANTOS, BONERME MATURAN, RAUL CANTIGA, EDUARDO CAMPUSO, RUDY ANADON, GILBERTO GABRONINO, BONIFACIO SALVADOR, CIRILO MINO, ROBERTO ABONADO, WARLITO MONTE, PEDRO ESQUIERDO, ALFREDO TROPICO, DANILO MEJOS, HECTOR ESTUITA, BARTOLOME CASTILLANES, EDUARDO CAPUYAN, SATURNINO CAGAS, ALEJANDRO HARDER, EDUARDO LARENA, JAIME MONTEDERAMOS, ERMELANDO BASADRE, REYNALDO LIMPAJAN, ELPIDIO LIBRANZA, TEDDY SUELO, JOSE AMOYLIN, TRANQUILINO ORALLO, CARLOS BALDOS, MANOLITO SABELLANO, CARMELITO TOBIAS, PRIMITIVO GARCIA, JUANITO ALDEPOLLA, LUDIVICO ABAD, WENCISLAO INGHUG, RICARDO ALTO, EPIFANIO JARABAY, FELICIANO AMPER, ALEXANDER JUDILLA, ROBERTO ANDRADE, ALFREDO LESULA, JULIO ANINO, BENITO MAGPUSAO, PEDRO AQUINO, EDDIE MANSANADES, ROMEO ARANETA, ARGUILLAO MANTICA, CONSTANCIO ARNAIZ, ERNESTO HOTOY, JUSTINO ASCANO, RICARDO MATURAN, EDILBERTO YAMBAO, ANTONIO MELARGO, JESUS BERITAN, ARSENIO MELICOR, DIOSDADO BONGABONG, LAURO MONTENEGRO, CARLITO**

BURILLO, LEO MORA, PABLO BUTIL, ARMANDO GUCILA, JEREMIAH CAGARA, MARIO NAMOC, CARLITO CAL, GERWINO NATIVIDAD, ROLANDO CAPUYAN, EDGARDO ORDIZ, LEONARDO CASURRA, PATROCINIO ORTEGA, FILEMON CESAR, MARIO PATAN, ROMEO COMPRADO, JESUS PATOC, RAMON CONSTANTINO, ALBERTO PIELAGO, SAMUEL DELA LLANA, NICASIO PLAZA, ROSALDO DAGONDON, TITO GUADES, BONIFACIO DINAGUDOS, PROCOPIO RAMOS, JOSE EBORAN, ROSENDO SAJOL, FRANCISCO EMPUERTO, PATRICIO SALOMON, NESTOR ENDAYA, MARIO SALVALEON, ERNESTO ESTILO, BONIFACIO SIGUE, VICENTE FABROA, JAIME SUCUAHI, CELSO HUISO, ALEX TAUTO-AN, SATURNINO YAGON, CLAUDIO TIROL, SULPECIO GAGNI, JOSE TOLERO, FERVIE GALVEZ, ALFREDO TORALBA and EDUARDO GENELSA, *respondents.*

[G.R. No. 155135. September 29, 2010]

NAGKAHIUSANG MAMUMUO SA ALSONS-SPFL (NAMAAL-SPFL), FELIXBERTO IRAG, JOSHUA BARREDO, ERNESTO CUARIO, EDGAR MONDAY, EDILBERTO DEMETRIA, HERMINIO ROBILLO, ROMULO LUNGAY, MATROIL DELOS SANTOS, BONERME MATURAN, RAUL CANTIGA, EDUARDO CAMPUSO, RUDY ANADON, GILBERTO GABRONINO, BONIFACIO SALVADOR, CIRILO MINO, ROBERTO ABONADO, WARLITO MONTE, PEDRO ESQUIERDO, ALFREDO TROPICO, DANILO MEJOS, HECTOR ESTUITA, BARTOLOME CASTILLANES, EDUARDO CAPUYAN, SATURNINO CAGAS, ALEJANDRO HARDER, EDUARDO LARENA, JAIME MONTEDERAMOS, ERMELANDO BASADRE, REYNALDO LIMPAJAN, ELPIDIO LIBRANZA, TEDDY SUELO, JOSE AMOYLIN, TRANQUILINO ORALLO, CARLOS BALDOS,

MANOLITO SABELLANO, CARMELITO TOBIAS, PRIMITIVO GARCIA, JUANITO ALDEPOLLA, LUDIVICO ABAD, WENCISLAO INGHUG, RICARDO ALTO, EPIFANIO JARABAY, FELICIANO AMPER, ALEXANDER JUDILLA, ROBERTO ANDRADE, ALFREDO LESULA, JULIO ANINO, BENITO MAGPUSAO, PEDRO AQUINO, EDDIE MANSANADES, ROMEO ARANETA, ARGUILLAO MANTICA, CONSTANCIO ARNAIZ, ERNESTO HOTOY, JUSTINO ASCANO, RICARDO MATURAN, EDILBERTO YAMBAO, ANTONIO MELARGO, JESUS BERITAN, ARSENIO MELICOR, DIOSDADO BONGABONG, LAURO MONTENEGRO, CARLITO BURILLO, LEO MORA, PABLO BUTIL, ARMANDO GUCILA, JEREMIAH CAGARA, MARIO NAMOC, CARLITO CAL, GERWINO NATIVIDAD, ROLANDO CAPUYAN, JUANITO NISNISAN, AURELIO CARIN, PRIMO OPLIMO, ANGELITO CASTAÑEDA, EDGARDO ORDIZ, LEONARDO CASURRA, PATROCINIO ORTEGA, FILEMON CESAR, MARIO PATAN, ROMEO COMPRADO, JESUS PATOC, RAMON CONSTANTINO, MANUEL PIAPE, ROY CONSTANTINO, ALBERTO PIELAGO, SAMUEL DELA LLANA, NICASIO PLAZA, ROSALDO DAGONDON, TITO GUADES, BONIFACIO DINAGUDOS, PROCOPIO RAMOS, JOSE EBORAN, ROSENDO SAJOL, FRANCISCO EMPUERTO, PATRICIO SALOMON, NESTOR ENDAYA, MARIO SALVALEON, ERNESTO ESTILO, BONIFACIO SIGUE, VICENTE FABROA, JAIME SUCUAHI, CELSO HUISO, ALEX TAUTO-AN, SATURNINO YAGON, CLAUDIO TIROL, SULPECIO GAGNI, JOSE TOLERO, FERVIE GALVEZ, ALFREDO TORALBA and EDUARDO GENELSA, *petitioners, vs.* **C. ALCANTARA & SONS, INC., EDITHA I. ALCANTARA, ATTY. NELIA A. CLAUDIO, CORNELIO E. CAGUIAT, JESUS S. DELA CRUZ, ROLANDO Z. ANDRES and JOSE MA. MANUEL YRASUEGUI,** *respondents.*

[G.R. No. 179220. September 29, 2010]

NAGKAHIUSANG MAMUMUO SA ALSONS-SPFL (NAMAAL-SPFL), and its members whose names are listed below, *petitioners, vs.* **C. ALCANTARA & SONS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; THE NATIONAL LABOR RELATIONS COMMISSION ACQUIRES JURISDICTION OVER PARTIES IN CASES BEFORE IT EITHER BY SUMMONS SERVED ON THEM OR BY THEIR VOLUNTARY APPEARANCE BEFORE ITS LABOR ARBITER.— The NLRC acquires jurisdiction over parties in cases before it either by summons served on them or by their voluntary appearance before its Labor Arbiter. Here, while the Union insists that summons were not properly served on the impleaded Union members with respect to the Company's amended petition that sought to declare the strike illegal, the records show that they were so served. The Return of Service of Summons indicated that 74 out of the 81 impleaded Union members were served with summons. But they refused either to accept the summons or to acknowledge receipt of the same. Such refusal cannot of course frustrate the NLRC's acquisition of jurisdiction over them. Besides, the affected Union members voluntarily entered their appearance in the case when they sought affirmative relief in the course of the proceedings like an award of damages in their favor.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; STRIKES AND LOCKOUTS; MAY BE REGARDED AS INVALID ALTHOUGH THE LABOR UNION HAS COMPLIED WITH THE STRICT REQUIREMENTS FOR STAGING ONE WHEN THE SAME IS HELD CONTRARY TO AN EXISTING AGREEMENT, SUCH AS A NO STRIKE CLAUSE OR CONCLUSIVE ARBITRATION CLAUSE.— A strike may be regarded as invalid although the labor union has complied with the strict requirements for staging one as provided in Article 263 of the Labor Code when the same is held contrary to an existing agreement, such as a no strike clause or conclusive arbitration clause. Here, the CBA between

the parties contained a "no strike, no lockout" provision that enjoined both the Union and the Company from resorting to the use of economic weapons available to them under the law and to instead take recourse to voluntary arbitration in settling their disputes. No law or public policy prohibits the Union and the Company from mutually waiving the strike and lockout maces available to them to give way to voluntary arbitration. Indeed, no less than the 1987 Constitution recognizes in Section 3, Article XIII, preferential use of voluntary means to settle disputes. Thus – **The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.** The Court finds no compelling reason to depart from the findings of the Labor Arbiter, the NLRC, and the CA regarding the illegality of the strike. Social justice is not one-sided. It cannot be used as a badge for not complying with a lawful agreement.

3. ID.; ID.; ID.; SINCE THE UNION'S STRIKE HAS BEEN DECLARED ILLEGAL, THE UNION OFFICERS CAN, IN ACCORDANCE WITH LAW BE TERMINATED FROM EMPLOYMENT FOR THEIR ACTIONS.— Since the Union's strike has been declared illegal, the Union officers can, in accordance with law be terminated from employment for their actions. This includes the shop stewards. They cannot be shielded from the coverage of Article 264 of the Labor Code since the Union appointed them as such and placed them in positions of leadership and power over the men in their respective work units.

4. ID.; ID.; ID.; THE MERE FACT THAT CRIMINAL COMPLAINTS AGAINST THE TERMINATED UNION MEMBERS WERE SUBSEQUENTLY DISMISSED FOR ONE REASON OR ANOTHER DOES NOT EXTINGUISH THEIR LIABILITY UNDER THE LABOR CODE.— As regards the rank and file Union members, Article 264 of the Labor Code provides that termination from employment is not warranted by the mere fact that a union member has taken part in an illegal strike. It must be shown that such a union member, clearly identified, performed an illegal act or acts during the strike. Here, although the Labor Arbiter found no proof that

the dismissed rank and file Union members committed illegal acts, the NLRC found following the injunction hearing in NLRC IC M-000126-98 that the Union members concerned committed such acts, for which they had in fact been criminally charged before various courts and the prosecutors' office in Davao City. Since the CA held that the existence of criminal complaints against the Union members did not warrant their dismissal, it becomes necessary for the Court to go into the records to settle the issue. The striking Union members allegedly committed the following prohibited acts: a. They threatened, coerced, and intimidated non-striking employees, officers, suppliers and customers; b. They obstructed the free ingress to and egress from the company premises; and c. They resisted and defied the implementation of the writ of preliminary injunction issued against the strikers. Cornelio Caguiat, Ruben Tungapalan, and Eufracio Rabusa depicted the above prohibited acts in their affidavits and testimonies. The Sheriff of the NLRC said in his Report that, in the course of his implementation of the writ of injunction, he observed that the striking employees blocked the exit lane of the Alson drive with their tent. Tungapalan, a non-striking employee, identified the Union members who threatened and coerced him. Indeed, he filed criminal actions against them. Lastly, the photos taken of the strike show the strikers, properly identified, committing the acts complained of. These constitute substantial evidence in support of the termination of the subject Union members. The mere fact that the criminal complaints against the terminated Union members were subsequently dismissed for one reason or another does not extinguish their liability under the Labor Code. Nor does such dismissal bar the admission of the affidavits, documents, and photos presented to establish their identity and guilt during the hearing of the petition to declare the strike illegal. The technical grounds that the Union interposed for denying admission of the photos are also not binding on the NLRC.

5. ID.; ID.; ARTICLE 223; ARTICLE 223, WHICH PROVIDES THAT THE DECISION OF THE LABOR ARBITER REINSTATING A DISMISSED EMPLOYEE SHALL IMMEDIATELY BE EXECUTORY PENDING APPEAL, CANNOT BUT APPLY TO ALL TERMINATIONS IRRESPECTIVE OF THE GROUNDS ON WHICH THEY

ARE BASED.— The grounds for termination under Article 264 are based on prohibited acts that employees could commit during a strike. On the other hand, the grounds for termination under Articles 282 to 284 are based on the employee's conduct in connection with his assigned work. Still, Article 217, which defines the powers of Labor Arbiters, vests in the latter jurisdiction over all termination cases, whatever be the grounds given for the termination of employment. Consequently, Article 223, which provides that the decision of the Labor Arbiter reinstating a dismissed employee shall immediately be executory pending appeal, cannot but apply to all terminations irrespective of the grounds on which they are based. Here, although the Labor Arbiter failed to act on the terminated Union Members' motion for reinstatement pending appeal, the Company had the duty under Article 223 to immediately reinstate the affected employees even if it intended to appeal from the decision ordaining such reinstatement. The Company's failure to do so makes it liable for accrued backwages until the eventual reversal of the order of reinstatement by the NLRC on November 8, 1999, a period of four months and nine days.

APPEARANCES OF COUNSEL

Potenciano A. Flores, Jr. for NAMAAL-SPFL, *et al.*

Laguesma Magsalin Consulta & Gastardo for Alcantara & Sons, Inc.

D E C I S I O N

ABAD, *J.*:

This case is about a) the consequences of an illegally staged strike upon the employment status of the union officers and its ordinary members and b) the right of reinstated union members to go back to work pending the company's appeal from the order reinstating them.

The Facts and the Case

C. Alcantara & Sons, Inc., (the Company) is a domestic corporation engaged in the manufacture and processing of

plywood. Nagkahiusang Mamumuo sa Alsons-SPFL (the Union) is the exclusive bargaining agent of the Company's rank and file employees. The other parties to these cases are the Union officers[1] and their striking members.[2]

The Company and the Union entered into a Collective Bargaining Agreement (CBA) that bound them to hold no strike and no lockout in the course of its life. At some point the parties began negotiating the economic provisions of their CBA but this ended in a deadlock, prompting the Union to file a notice of strike. After efforts at conciliation by the Department of Labor and Employment (DOLE) failed, the Union conducted a strike vote that resulted in an overwhelming majority of its members favoring it. The Union reported the strike vote to the DOLE and, after

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[1] The officers of the Union are the following: Felixberto Irag, Joshua Barredo, Edilberto Demetria, Romulo Lungay, Bonerme Maturan, Eduardo Campuso, Gilberto Gabronino, Cirilo Mino, Roberto Abonado, Fructoso Cabahog, Alfredo Tropico, Hector Estuita, Eduardo Capuyan, Alejandro Harder, Jaime Montederamos, Reynaldo Limpajan, Ernesto Cuario, Edgar Monday, Herminio Robillo, Matroil delos Santos, Raul Cantiga, Rudy Anadon, Bonifacio Salvador, Florente Seno, Warlito Monte, Pedro Esquierdo, Danilo Mejos, Bartolome Castillanes, Saturnino Cagas, Eduardo Larena, Ermelando Basadre, Elpidio Libranza.Teddy Suelo, Tranquilino Orallo, Manolito Sabellano, Primitivo Garcia, Jose Amoylin, Carlos Baldos, Carmelito Tobias and Juanito Aldepolla.

[2] These are Ludivicio Abad, Ricardo Alto, Feliciano Amper, Roberto Andrade, Julio Anino, Pedro Aquino, Romeo Araneta, Constancio Arnaiz, Justino Ascano, Ernesto Baino, Jesus Beritan, Diosdado Bongabong, Carilito Cal, Rolando Capuyan, Aurelio Carin, Angelito Castañeda, Leonaro Casurra, Filemon Cesar, Romeo Comprado, Ramon Constantino, Roy Constantino, Samuel dela Llana, Rosaldo Dagondon, Bonifacio Dinagudos, Jose Eboran, Francisco Empuerto, Nestor Endaya, Ernesto Estilo, Vicente Fabroa, Ramon Fernando, Samson Fulgueras, Sulpecio Gagni, Fervie Galvez, Eduardo Genelsa, Tito Guades, Armando Gucila, Ernesto Hotoy, Wencislao Inghug, Epifanio Jarabay, Alexander Judilla, Alfredo Lesula, Benito Magpusao, Eddie Mansanades, Arguilao Mantica, Silverio Maranian, Ricardo Maturan, Antonio Melargo, Arsenio Melicor, Lauro Montenegro, Leo Mora, Ronaldo Naboya, Mario Namoc, Gerwino Natividad, Juanito Nisnisan, Primo Oplimo, Edgardo Ordiz, Patrocino Ortega, Mario Patan, Jesus Patoc, Manuel Piape, Alberto Pielago, Nicasio Plaza, Fausto Quibod, Procopio Ramos, Rosendo Sajol, Patricio Solomon, Mario Salvaleon, Bonifacio Sigue, Jaime Sucuahi, Alex Tauto-an, Claudio Tirol, Jose Tolero, Alfredo Toralba, Eusebio Tumulak, Hermes Villacarlos, Saturnino Yagon and Edilberto Yambao.

the observance of the mandatory cooling-off period, went on strike.

During the strike, the Company filed a petition for the issuance of a writ of preliminary injunction with prayer for the issuance of a temporary restraining order (TRO) *Ex Parte*[3] with the National Labor Relations Commission (NLRC) to enjoin the strikers from intimidating, threatening, molesting, and impeding by barricade the entry of non-striking employees at the Company's premises. The NLRC first issued a 20-day TRO and, after hearing, a writ of preliminary injunction, enjoining the Union and its officers and members from performing the acts complained of. But several attempts to implement the writ failed. Only the intervention of law enforcement units made such implementation possible. Meantime, the Union filed a petition[4] with the Court of Appeals (CA), questioning the preliminary injunction order. On February 8, 1999 the latter court dismissed the petition. The Union did not appeal from such dismissal.

The Company, on the other hand, filed a petition with the Regional Arbitration Board to declare the Union's strike illegal,[5] citing its violation of the no strike, no lockout, provision of their CBA. Subsequently, the Company amended its petition to implead the named Union members who allegedly committed prohibited acts during the strike. For their part, the Union, its officers, and its affected members filed against the Company a counterclaim for unfair labor practices, illegal dismissal, and damages. The Union also assailed as invalid the service of summons on the individual Union members included in the amended petition.

On June 29, 1999 the Labor Arbiter rendered a decision,[6] declaring the Union's strike illegal for violating the CBA's no strike, no lockout, provision. As a consequence, the Labor Arbiter

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[3] Docketed as NLRC IC M-000126-98.

[4] Docketed as CA-G.R. SP 50371.

[5] Docketed as NLRC RAB-11-08-01064-98.

[6] NLRC records, Vol. 1, pp. 845-869.

held that the Union officers should be deemed to have forfeited their employment with the Company and that they should pay actual damages of ₱3,825,000.00 plus 10% interest and attorney's fees. With respect to the striking Union members, finding no proof that they actually committed illegal acts during the strike, the Labor Arbiter ordered their reinstatement without backwages. The Labor Arbiter denied the Union's counterclaim for lack of merit.

On June 29, 1999 the terminated Union members promptly filed a motion for their immediate reinstatement but the Labor Arbiter did not act on the same. At any rate, the Company did not reinstate them. Both parties appealed[7] the Labor Arbiter's decision to the NLRC. The Company impugned the Labor Arbiter's decision insofar as it ordered the reinstatement of the terminated Union members. The Union, on the other hand, questioned the declaration of illegality of the strike as well as the dismissal of its officers and the order for them to pay damages.

On November 8, 1999 the NLRC rendered a decision,[8] affirming that of the Labor Arbiter insofar as the latter declared the strike illegal, ordered the Union officers terminated, and directed them to pay damages to the Company. The NLRC ruled, however, that the Union members involved, who were identified in the proceedings held in the case, should also be terminated for having committed prohibited and illegal acts.

The Union filed a petition for *certiorari*[9] with the CA, questioning the NLRC decision. Finding merit in the petition, the CA rendered a decision on March 20, 2002,[10] annulling the NLRC decision and reinstating that of the Labor Arbiter. The Company and the Union with its officers and members filed separate petitions for review of the CA decision in G.R. 155109 and 155135, respectively.

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[7] Docketed as NLRC CA M-004996-99.

[8] NLRC records, Vol. 3, pp. 575-591.

[9] Docketed as CA-G.R. SP 59604.

[10] CA *rollo*, Vol. 2, pp. 1090-1097.

During the pendency of these cases, the affected Union members filed with the Labor Arbiter a motion for reinstatement pending appeal by the parties and the computation of their backwages based on the CA decision. After hearing, the Labor Arbiter issued a resolution dated November 21, 2002,[11] holding that due to the delay in the resolution of the dispute and the impracticability of reinstatement owing to the fact that the relations between the terminated Union members and the Company had been severely strained by the prolonged litigation, payment of separation pay to such Union members was in order. The Labor Arbiter thus approved the computation and payment of their separation pay and denied all their other claims.

Both parties appealed the Labor Arbiter's resolution[12] to the NLRC. Initially, in its resolution dated April 30, 2003,[13] the NLRC declared the Labor Arbiter's resolution of November 21, 2002 void for lack of factual and legal basis but ordered the Company to pay the affected employees' accrued wages and 13th month pay considering the Company's refusal to reinstate them pending appeal. On motion for reconsideration by both parties, however, the NLRC issued a resolution on August 29, 2003,[14] modifying its earlier resolution by deleting the grant of accrued wages and 13th month pay to the subject employees, thus denying their motion for computation.

Upon the Union's petition for *certiorari*[15] with the CA, questioning the NLRC's denial of the terminated Union members' claim for separation pay, accrued wages, and other benefits, the CA rendered a decision on February 24, 2005,[16] dismissing the petition. The CA ruled that the reinstatement pending appeal provided under Article 223 of the Labor Code contemplated

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[11] NLRC records, Vol. 6, pp. 164-170.

[12] Docketed as NLRC CA M-007314-2002.

[13] *Id.* at 612-620.

[14] *Id.* at 1177-1184.

[15] Docketed as CA-G.R. SP 80507.

[16] *Rollo* (G.R. 155109), pp. 787-800.

illegal dismissal or termination cases and not cases under Article 263. Thus, the CA ruled that the resolution ordering the reinstatement of the terminated Union members and the payment of their wages and other benefits had no basis. Aggrieved, the Union sought intervention by this Court.

The Issues Presented

The issues presented in these cases are:

1. Whether or not the NLRC properly acquired jurisdiction over the persons of the individual Union members impleaded in the case;

2. Whether or not the Union staged an illegal strike;

3. Assuming the strike to be illegal, whether or not the impleaded Union members committed illegal acts during the strike, justifying their termination from employment;

4. Whether or not the terminated Union members are entitled to the payment of backwages on account of the Company's refusal to reinstate them, pending appeal by the parties, from the Labor Arbiter's decision of June 29, 1999; and

5. Whether or not the terminated Union members are entitled to accrued backwages and separation pay.

The Rulings of the Court

One. The NLRC acquires jurisdiction over parties in cases before it either by summons served on them or by their voluntary appearance before its Labor Arbiter. Here, while the Union insists that summons were not properly served on the impleaded Union members with respect to the Company's amended petition that sought to declare the strike illegal, the records show that they were so served. The Return of Service of Summons[17] indicated that 74 out of the 81[18] impleaded Union members

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[17] NLRC records, Vol. 1, pp. 57-58, 123-127.

[18] Respondents Ricardo Alto, Ramon Constantino, Rosaldo Dagondon, Vicente Fabroa, Jose Tolero, Mario Namoc and Rolando Naboya were not served with summons due to incomplete address.

were served with summons. But they refused either to accept the summons or to acknowledge receipt of the same. Such refusal cannot of course frustrate the NLRC's acquisition of jurisdiction over them. Besides, the affected Union members voluntarily entered their appearance in the case when they sought affirmative relief in the course of the proceedings like an award of damages in their favor.

Two. A strike may be regarded as invalid although the labor union has complied with the strict requirements for staging one as provided in Article 263 of the Labor Code when the same is held contrary to an existing agreement, such as a no strike clause or conclusive arbitration clause.[19] Here, the CBA between the parties contained a "no strike, no lockout" provision that enjoined both the Union and the Company from resorting to the use of economic weapons available to them under the law and to instead take recourse to voluntary arbitration in settling their disputes.

No law or public policy prohibits the Union and the Company from mutually waiving the strike and lockout maces available to them to give way to voluntary arbitration. Indeed, no less than the 1987 Constitution recognizes in Section 3, Article XIII, preferential use of voluntary means to settle disputes. Thus —

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

The Court finds no compelling reason to depart from the findings of the Labor Arbiter, the NLRC, and the CA regarding the illegality of the strike. Social justice is not one-sided. It cannot be used as a badge for not complying with a lawful agreement.

Three. Since the Union's strike has been declared illegal, the Union officers can, in accordance with law be terminated

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[19] I Teller 314-317 cited in Azucena, C. *Everyone's Labor Code*, 2007 edition, p. 291.

from employment for their actions. This includes the shop stewards. They cannot be shielded from the coverage of Article 264 of the Labor Code since the Union appointed them as such and placed them in positions of leadership and power over the men in their respective work units.

As regards the rank and file Union members, Article 264 of the Labor Code provides that termination from employment is not warranted by the mere fact that a union member has taken part in an illegal strike. It must be shown that such a union member, clearly identified, performed an illegal act or acts during the strike.[20]

Here, although the Labor Arbiter found no proof that the dismissed rank and file Union members committed illegal acts, the NLRC found following the injunction hearing in NLRC IC M-000126-98 that the Union members concerned committed such acts, for which they had in fact been criminally charged before various courts and the prosecutors' office in Davao City. Since the CA held that the existence of criminal complaints against the Union members did not warrant their dismissal, it becomes necessary for the Court to go into the records to settle the issue.

The striking Union members allegedly committed the following prohibited acts:

a. They threatened, coerced, and intimidated non-striking employees, officers, suppliers and customers;

b. They obstructed the free ingress to and egress from the company premises; and

c. They resisted and defied the implementation of the writ of preliminary injunction issued against the strikers.

Cornelio Caguiat, Ruben Tungapalan, and Eufracio Rabusa depicted the above prohibited acts in their affidavits and

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[20] *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*, G.R. Nos. 158786, 158789 & 158798-99, October 19, 2007, 537 SCRA 171, 212.

testimonies. The Sheriff of the NLRC said in his Report[21] that, in the course of his implementation of the writ of injunction, he observed that the striking employees blocked the exit lane of the Alson drive with their tent. Tungapalan, a non-striking employee, identified the Union members who threatened and coerced him. Indeed, he filed criminal actions against them. Lastly, the photos taken of the strike show the strikers, properly identified, committing the acts complained of. These constitute substantial evidence in support of the termination of the subject Union members.

The mere fact that the criminal complaints against the terminated Union members were subsequently dismissed for one reason or another does not extinguish their liability under the Labor Code. Nor does such dismissal bar the admission of the affidavits, documents, and photos presented to establish their identity and guilt during the hearing of the petition to declare the strike illegal. The technical grounds that the Union interposed for denying admission of the photos are also not binding on the NLRC.[22]

Four. The terminated Union members contend that, since the Company refused to reinstate them after the Labor Arbiter rendered a decision in their favor, the Company should be ordered to pay them their wages during the pendency of the appeals from the Labor Arbiter's decision.

It will be recalled that after the Labor Arbiter rendered his decision on June 29, 1999, which decision ordered the reinstatement of the terminated Union members, the latter promptly filed a motion for their reinstatement pending appeal. But the Labor Arbiter did not for some reason act on the motion. As it happened, after about four months or on November 8, 1999, the NLRC reversed the Labor Arbiter's reinstatement order. It cannot be said, therefore, that the Company had resisted a standing order of reinstatement directed at it at this point.

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[21] NLRC records, Vol. 1, pp. 110-111.

[22] LABOR CODE, Article 221.

Of course, on March 20, 2002 the CA restored the Labor Arbiter's reinstatement order. And this prompted the affected Union members to again file with the Labor Arbiter a motion for their reinstatement pending appeal. But, acting on the motion, the Labor Arbiter resolved at this point that reinstatement was no longer practicable because of the severely strained relation between the company and the terminated Union members. In place of reinstatement, the Labor Arbiter ordered the Company to pay them their separation pays.

Both parties appealed the Labor Arbiter's above ruling[23] to the NLRC. But, as it turned out the NLRC did not also favor reinstatement. It instead ordered the Company to pay the terminated Union members their accrued wages and 13th month pay considering its refusal to reinstate them pending appeal. On motion for reconsideration, however, the NLRC reconsidered and deleted altogether the grant of accrued wages and 13th month pay. The Union appealed the NLRC ruling to the CA on behalf of its terminated members but the CA denied their appeal.

The CA denied reinstatement for the reason that the reinstatement pending appeal provided under Article 223 of the Labor Code contemplated illegal dismissal or termination cases and not cases under Article 264. But this perceived distinction does not find support in the provisions of the Labor Code.

The grounds for termination under Article 264 are based on prohibited acts that employees could commit during a strike. On the other hand, the grounds for termination under Articles 282 to 284 are based on the employee's conduct in connection with his assigned work. Still, Article 217, which defines the powers of Labor Arbiters, vests in the latter jurisdiction over all termination cases, whatever be the grounds given for the termination of employment. Consequently, Article 223, which provides that the decision of the Labor Arbiter reinstating a dismissed employee shall immediately be executory pending appeal, cannot but apply to all terminations irrespective of the grounds on which they are based.

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[23] Docketed as NLRC CA M-007314-2002.

Here, although the Labor Arbiter failed to act on the terminated Union members' motion for reinstatement pending appeal, the Company had the duty under Article 223 to immediately reinstate the affected employees even if it intended to appeal from the decision ordaining such reinstatement. The Company's failure to do so makes it liable for accrued backwages until the eventual reversal of the order of reinstatement by the NLRC on November 8, 1999,[24] a period of four months and nine days.

Five. While it is true that generally the grant of separation pay is not available to employees who are validly dismissed, there are, in furtherance of the law's policy of compassionate justice, certain circumstances that warrant the grant of some relief in favor of the terminated Union members based on equity.

Bitter labor disputes, especially strikes, always generate a throng of odium and abhorrence that sometimes result in unpleasant, although unwanted, consequences.[25] Considering this, the striking employees' breach of certain restrictions imposed on their concerted actions at their employer's doorsteps cannot be regarded as so inherently wicked that the employer can totally disregard their long years of service prior to such breach.[26] The records also fail to disclose any past infractions committed by the dismissed Union members. Taking these circumstances in consideration, the Court regards the award of financial assistance to these Union members in the form of one-half month salary for every year of service to the company up to the date of their termination as equitable and reasonable.

WHEREFORE, the Court *DENIES* the petition of the Nagkahiusang Mamumuo sa Alsons-SPFL and its officers and members in G.R. 155135 for lack of merit, and *REVERSES* and *SETS ASIDE* the decision of the Court of Appeals in CA-

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[24] See *Garcia v. Philippine Airlines, Inc.*, G.R. No. 164856, January 20, 2009, 576 SCRA 479, 489.

[25] *Kimberly Clark (Phils.) v. Facundo*, G.R. No. 144885, July 12, 2006.

[26] *Rollo* (G.R. 155109), p. 1011. Some of them were hired as early as 1972.

G.R. SP 59604 dated March 20, 2002. The Court, on the other hand, *GRANTS* the petition of C. Alcantara & Sons, Inc. in G.R. 155109 and *REINSTATES* the decision of the National Labor Relations Commission in NLRC CA M-004996-99 dated November 8, 1999.

Further, the Court *PARTIALLY GRANTS* the petition of the Nagkahiusang Mamumuo sa Alsons-SPFL and their dismissed members in G.R. 179220 and *ORDERS* C. Alcantara & Sons, Inc. to pay the terminated Union members backwages for four (4) months and nine (9) days and separation pays equivalent to one-half month salary for every year of service to the company up to the date of their termination, with interest of 12% per annum from the time this decision becomes final and executory until such backwages and separation pays are paid. The Court *DENIES* all other claims.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 156439. September 29, 2010]

CLEMENCIA P. CALARA, *ET AL.*, *petitioners, vs.* **TERESITA FRANCISCO, *ET AL.*,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; DETERMINATION OF THE ISSUES AT THE PRE-TRIAL CONFERENCE BARS THE CONSIDERATION OF OTHER QUESTIONS ON APPEAL.— The rule is settled that the determination of the issues at a pre-trial conference bars the consideration of other questions on appeal. Having accepted

the MTC's favorable 26 October 1999 decision which cited liberal construction of procedural rules in excusing respondents' tardy filing of their position paper, petitioners were also resultantly barred from taking issue against the former's late filing of said position paper on 28 June 1999. With the RTC's 23 May 2000 decision in Civil Case No. 2866-99-C likewise not delving into the matter, we find that the CA cannot be faulted for brushing aside petitioners' belated harping over said procedural lapses in their comment to respondents' petition for review which was docketed thereat as CA-G.R. SP No. 6123. After all, points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal.

2. ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; FAILURE OF DEFENDANT TO FILE SUPERSEDEAS BOND DOES NOT PREJUDICE THE APPEAL OTHERWISE PERFECTED IN THE PREMISES.— Neither is there merit in petitioners' position that respondents' failure to file the required supersedeas bond had already rendered the MTC's 26 October 1999 decision final and executory. Although a decision in an ejectment case favorable to the plaintiff is immediately executory unless a supersedeas bond is filed by the defendant, the latter's failure to file said bond does not prejudice the appeal otherwise perfected in the premises. This is evident from Section 19, Rule 70 of the *1997 Rules of Civil Procedure*.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; HOUSING AND LAND USE REGULATORY BOARD (HLURB); HAS JURISDICTION OVER THE PRESENT CONTROVERSY.— Given the factual and procedural antecedents and the absence of showing that petitioner Clemencia Calara perfected and appeal from the foregoing decision, We find that the CA correctly ruled that the case petitioners filed before the MTC fell within the jurisdiction of the HLURB which, as a reconfiguration of the HSRC, retained said office's regulatory and adjudicatory functions under Section 8 of E.O. 648. "When an administrative agency is conferred quasi-judicial functions, it has been ruled that all controversies relating to the subject matter pertaining to its specialization are deemed to be included

within its jurisdiction" since "split jurisdiction is not favored." This holds particularly true of the case at bench where, despite petitioner Clemencia Calara's failure to appeal the aforequoted decision of the HSRC, petitioners' pursuit of their complaint for unlawful detainer against respondents was accompanied by a defiance of said office's order to develop subdivision which had, in the meantime, been renamed as the San Isidro Village.

4. ID.; ID.; ID.; ID.; AS THE SOLE REGULATORY BODY FOR HOUSING AND LAND DEVELOPMENT, THE HLURB HAS JURISDICTION OVER PETITIONER'S CAUSE AGAINST RESPONDENTS AND IS CLEARLY THE BEST FORUM FOR THE DETERMINATION OF ALL ISSUES RELEVANT THERETO.— It bears emphasizing that more than 33 years have already elapsed from the time that petitioners and respondents agreed on the sale of Lot 23 of the Lophcal (Calara) Subdivision sometime in 1976. In the intervening period, the parties have not only filed their respective complaints before the HLURB and the MTC but had already performed acts and acquired rights, the myriad consequences of which could not possibly be squarely addressed in the case for unlawful detainer where possession is unlawfully withheld after the expiration or termination of the right to hold possession under any contract, express or implied. As the sole regulatory body for housing and land development, the HLURB has jurisdiction over petitioners' cause against respondents and is clearly the best forum for the determination of all the issues relevant thereto.

5. ID.; ID.; ID.; ID.; RESPONDENT'S MAIN CAUSE OF ACTION IS THE PETITIONER-DEVELOPER'S FAILURE TO DEVELOP THE SUBDIVISION WHICH RESPONDENT CITED AS JUSTIFICATION FOR NOT MAKING FURTHER PAYMENTS ON THE LOT IN ISSUE.— The mere relationship of the parties as a subdivision developer/owner and subdivision lot buyer does not, concededly, vest the HLURB automatic jurisdiction over a case. In the cases of *Roxas vs. Court of Appeals* and *Pilar Development Corporation vs. Sps. Villar*, this Court upheld the MTC's jurisdiction over the complaint for ejectment commenced by the subdivision developer on account of the buyer's failure to pay the installments stipulated in the party's contract to sell. In said

cases, however, the buyers had no justifiable ground to stop payment of the stipulated installments and/or any of the causes of action cognizable by the HLURB under Section 1 of P.D. 1344. In not applying the ruling in *Francel Realty Corporation vs. Sycip*, moreover, the Court likewise took appropriate note of the fact that buyers in said cases have not commenced an action for unsound real estate businesses practices against the subdivision developers. Here, respondents have not only instituted a complaint for violation of P.D. 957 against petitioner Clemencia Calara but had also already obtained a definitive ruling on the latter's failure to fully develop the subdivision which they cited as justification for not making further payments on Lot No. 23 of the Lophcal (Calara) Subdivision.

6. CIVIL LAW; CONTRACTS; ESSENTIAL ELEMENTS OF A PERFECTED CONTRACT ARE PRESENT IN THE ORAL CONTRACT OF SALE BETWEEN THE PARTIES.— In addition to respondents' failure to make further payments on Lot 23, petitioners have, of course, made much of the supposed fact that no contract of sale was perfected between the parties in view of the former's supposed refusal to execute the requisite Contract to Sell. In this regard, petitioner calls our attention to the 18 October 2001 decision rendered by the CA's then Special Eight Division in CA-G.R. SP No. 58498, the petition filed by Gaudencio Navarro for the review of the 7 March 2000 decision of Branch 35 of the RTC of Calamba which, in turn, affirmed the 26 October 1999 decision rendered by the MTC of Los Banos in favor of petitioners in Civil Case No. 994. In said 18 October 2001 decision, the CA upheld the jurisdiction of the MTC over the complaint for ejectment similarly filed by petitioners against Gaudencio Navarro and discounted the existence of a perfected contract of sale between the parties for lack of concrete showing of "specific terms and conditions on the manner of payment" of the stipulated consideration for the lot purchased by said buyer. For failure of Gaudencio Navarro to file a petition for review of said decision in CA-G.R. SP No. 58498, the corresponding Entry of Judgment was issued by the CA on 8 November 2001. As a consensual contract, however, it cannot be gainsaid that sale is perfected by mere consent, which is manifested by a meeting of the minds as to the offer and acceptance thereof on the subject matter, price and terms of payment of the price. That these essential requisites

are present in the oral contract of sale between the parties may be readily gleaned from paragraph 3 of petitioners' own amended complaint which distinctly identified the Lot 23 of the Lophcal (Calara) Subdivision as the subject matter thereof and the price of ₱80.00 per square meter as the agreed consideration for its total area of 250 square meter. Unlike their contract with Gaudencio Navarro, moreover, petitioners appear to have further agreed on the terms of payment of the price for the lot purchased by respondents. Having allowed the latter to build a house on said lot after accepting their initial payments in the aggregate sum of ₱7,948.00, petitioner Clemencia Calara significantly specified the terms of payment agreed upon by the parties in the following 20 March 1979 demand letter she sent respondent Teresita Francisco.

7. ID.; ID.; CONTRACTS; SHALL BE OBLIGATORY IN WHATEVER FORM THEY MAY HAVE BEEN ENTERED INTO, PROVIDED ALL THE ESSENTIAL REQUISITES FOR THEIR VALIDITY ARE PRESENT; RESPONDENT'S ALLEGED REFUSAL TO EXECUTE THE CONTRACT ONLY GIVES RISE TO A CAUSE OF ACTION FOR SPECIFIC PERFORMANCE PURSUANT TO ARTICLES 1357 AND 1358 OF THE CIVIL CODE.— Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. Given the proven justification for respondents' stoppage of further payments on Lot 23, We find that respondents' alleged refusal to execute said contract only gives rise to a cause of action for specific performance pursuant to Article 1357 and 1357 of the *Civil Code of the Philippines*. Insofar as it concerns the sale of subdivision lots, jurisdiction over such a case is vested with the HLURB UNDER Section 8 (11) of E.O. 648. In the second *Francel Realty Corporation vs. Sycip* case which dealt with the complaint for reconveyance and damages subsequently filed by the subdivision developer, this Court ruled that "the HLURB is not deprived of jurisdiction to hear and decide a case merely on the basis that it has been initiated by the developer and not by the buyer."

APPEARANCES OF COUNSEL

Dennis Balean Co for respondents.

D E C I S I O N

PEREZ, *J.*:

The delineation of the jurisdiction of the regular courts and the Housing and Land Use Regulatory Board (HLURB) over cases between a subdivision owner and buyer is primarily at issue in this petition for review on *certiorari* filed pursuant to Rule 45 of the 1997 *Rules of Civil Procedure*, assailing the 12 April 2002 Decision rendered by the Special Seventh Division of the Court of Appeals (CA) in CA-G.R. SP No. 91771.[1]

The Facts

Petitioner Clemencia Calara and her children, petitioners Concepcion, Elenita, Isidro, Carlosa, Bernardino, Doris, Cladiolosa and Lophcal, all surnamed Calara, own the Lophcal (Calara) Subdivision in Brgy. Anos, Los Baños.[2] Petitioner Clemencia Calara was named respondent in a letter-complaint for violation of P.D. 957[3] instituted on 28 April 1982 by a group of buyers, one Gaudencio Navarro and respondent Jesus Francisco among them, before the then Human Settlement Regulatory Commission (HSRC). Incorporating such grievances as absence of a drainage system, unfinished curb and gutter, undeveloped roads and abandoned electrical facilities, the complaint was docketed before said office as HSRC Case No. REM-060482-1043.[4]

Contending that the portions sold in favor of the complaining buyers resulted from the partitioning of the aforesaid parcel by its co-owners, petitioner Clemencia Calara filed an answer dated 11 July 1982 alleging that the subdivision was exempt from P.D. 957 and that complaints for ejectment were about to be filed against said buyers.[5] On 29 July 1982, petitioners

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[1] Records, CA-G.R. SP No. 61243, pp. 454-460.

[2] Records, Civil Case No. 993, Vol. I, pp. 11-12.

[3] *The Subdivision and Condominium Buyers' Protective Decree.*

[4] *Rollo*, p. 125.

[5] Records, Civil Case No. 993, Vol. I, pp. 194-196.

consequently filed against respondents Spouses Jesus and Teresita Francisco the complaint for unlawful detainer docketed as Civil Case No. 993 before the then Municipal Court of Los Baños, Laguna.[6] A separate complaint for unlawful detainer was likewise filed by petitioners against Gaudencio Navarro and was docketed before the same court as Civil Case No. 994.[7]

In their 29 January 1990 amendment of the complaint against respondents, petitioners alleged that, sometime in 1976, the former manifested their intention to buy the 250-square meter parcel denominated as Lot No. 23 of the Lophcal (Calara) Subdivision at the price of ₱80.00 per square meter; that having made an advance payment in the sum of ₱8,093.00, respondents were made to understand that their purchase of said parcel is conditioned on the parties' execution of a contract to sell over the same; that after constructing a house of strong materials, however, respondents have not only refused to execute a contract to sell but also failed to make any further payments on the lot; and, that having already ignored petitioner Clemencia Calara's 20 March 1979 demand letter for them to vacate the property, respondents also refused to heed the 27 March 1982 demand to the same effect served upon them by petitioners' counsel. In addition to respondents' ejectment from the lot and the turnover of the peaceful possession thereof, petitioners sought indemnities for exemplary damages, attorney's fees and the costs.[8]

On 26 August 1982, respondents and Gaudencio Navarro filed a joint motion to dismiss on the ground that the Municipal Court had no jurisdiction over the complaints filed against them by petitioner since another action over the same cause and the same parties was pending before the HSRC; and, that said complaints failed to state a cause of action. Dissatisfied with the denial of said motion in the 28 June 1983 resolution issued by the Municipal Court which had, by then, been reorganized

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[6] *Id.* at 1-6.

[7] *Id.* at 25.

[8] *Id.* at 102-107.

as a Municipal Trial Court (MTC)[9] pursuant to Batas Pambansa Blg. 129,[10] respondents and Gaudencio Navarro filed a 30 June 1983 motion for reconsideration[11] which was no longer resolved in view of the ensuing approval and effectivity of the *Rules on Summary Procedure*. In the meantime, the HSRC rendered a decision dated 4 June 1985 in HLURB Case No. REM-060482-1043,[12] disposing of the case in the following wise:

> Premises considered, it appearing that respondent had sold subdivision lots within the Opaco Lophcal Subdivision project without securing the necessary license to sell as required in Sections 4 & 5 of P.D. 957, and it appearing further that respondent had failed to develop the subdivision despite repeated demands thereof(r) by complainants, judgment is hereby rendered ordering respondent (1) to cease and desist from selling or offering to sell the remaining unsold lots in Opaco Lophcal Subdivision until such time as she shall have duly registered the subdivision project and secured the requisite license to sell pursuant to Section (sic) 4 & 5 of P.D. 957; (2) to develop the subdivision within four (4) months from receipt of this decision and to submit to this Commission, within ten (10) days from receipt hereof, a timetable to undertake said development and, thereafter, a progress report every end of the month or as often as this Commission may require.
>
> An administrative fine of ₱5,000.00 is hereby imposed upon respondent for violation of Section (sic) 4, 5 and 20 of P.D. 957.
>
> Failure to comply with this decision shall constrain this Commission to forward the records of this case to the Task Force on Subdivision, Ministry of Justice, for the filing of appropriate charges against respondent Clemencia Calara for violation of P.D. 957.
>
> Let copies of this decision be furnished all parties concerned.
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> It is SO ORDERED.[13]

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[9] *Id.* at 35-39.

[10] *The Judiciary Reorganization Act of 1980*.

[11] Records, Civil Case No. 993, Vol. I, pp. 40-46.

[12] *Id.* at 72-74.

[13] *Id.* at 74.

On the other hand, in compliance with the MTC's directive during 23 May 1989 hearing conducted in the case,[14] respondents and Gaudencio Navarro, filed their 5 June 1989 answer, specifically denying the material allegations of the complaint. Calling attention to the HSRC's 4 June 1985 decision in HSRC Case No. REM-060482-1043, said answering defendants averred that, despite the perfection of the sale over the lots respectively occupied by them, they were constrained to stop paying the monthly amortizations thereon in view of petitioners' failure to comply with their obligations as subdivision developers. Signifying their willingness to continue paying their respective amortizations/ installments upon the latter's compliance with the decision rendered by the HSRC, the former prayed for the dismissal of the complaint as well as the grant of their counterclaims for moral damages.[15]

Having terminated the mandatory pre-trial conference[16] and in receipt of the position papers submitted by the parties, the MTC went on to render a decision dated 6 October 1999, discounting the existence of a contract of sale between petitioners and respondents and upholding its jurisdiction over the case. Further finding that respondents were builders in bad faith,[17] the MTC disposed of Civil Case No. 993 in the following wise:

> WHEREFORE, the above premises considered, and on a finding that plaintiff and her children have been unlawfully deprived of possession of the subject lot they own, judgment is hereby rendered in favor of plaintiff CLEMENCIA F. CALARA, and her children, CONCEPCION, ELENITA, ISIDRO, CARLOSA, BERNARDO, DORIS CLADIOLOSA and LOPCHAL, all surnamed CALARA, and as against defendants TERESITA FRANCISCO and JESUS FRANCISCO, and ordering.
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> 1. Said defendants TERESITA FRANCISCO and JESUS FRANCISCO and all those acting in their behalves, or

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[14] *Id.* at 57.

[15] *Id.* at 58-63.

[16] *Id.* at 112-116.

[17] *Id.* at 326-342.

claiming rights under them, to completely vacate the parcel of residential lot identified as Lot No. 4-A-4-9-20-D-5-A, containing 278 square meters, more or less, covered by Transfer Certificate of Title No. T-52242, registered in the name of plaintiffs, and which lot is identified as Lot 23 in the original subdivision plan of LOPHCAL (CALARA) SUBDIVISION, located at Brgy. Anos, Los Baños, Laguna, and forthwith to turn over and surrender possession of the same to said plaintiff and her children;

2. Said defendants, and all persons claiming rights under them, to remove and demolish any and all houses, structures erected, built, or constructed by them, or existing, over the said described property, without right of reimbursement, forthwith upon receipt of a copy of this Judgment;

3. Said defendants to jointly and severally pay said plaintiff(s) damages representing the reasonable rental compensation or value for the use and occupancy of the lot belonging to plaintiffs and children, in the total sum of ₱188,771.28 corresponding to the period from April 1, 1979 up to October 31, 1999 and the sum of ₱1,800.00 a month, corresponding to reasonable rental thenceforth with twenty (20%) percent increase per annum, up to and until said defendants fully vacate the property of the plaintiffs, with all accrued and unpaid amounts to bear interest at 6% from date of first demand and/or date when they had/should have first accrued and until fully paid;

4. Said defendants to pay said plaintiffs the sum of ₱60,000.00, for and as attorney's fee;

5. Said defendants to pay plaintiffs the sum of ₱10,000.00 representing litigation costs.

The counterclaims interposed by defendants against plaintiffs is hereby ordered dismissed for lack of merit.

SO ORDERED.[18]

Elevated by respondents on appeal before Branch 37 of the Regional Trial Court (RTC) of Calamba, Laguna, the foregoing

[18] *Id.* at 342.

decision was affirmed *in toto* in the 23 May 2000 decision rendered by said court in Civil Case No. 2866-99-C.[19] Undeterred by the denial of their motion for reconsideration of said decision in the RTC's order dated 21 September 2000,[20] respondents filed the petition for review which was docketed as CA-G.R. SP No. 61243 before the CA which, thru its then Special Twelfth Division, granted their application for a writ of preliminary injunction to enjoin the enforcement of said 23 May 2000 decision.[21] On 12 April 2002, the then Special Seventh Division of the CA rendered the herein assailed decision, reversing the decisions of the MTC and RTC and ordering the dismissal of petitioners' complaint for unlawful detainer[22] upon the following findings and conclusions:

"The action is not a simple case for unlawful detainer. The complaint focuses on [respondents'] refusal to execute the Contract to Sell and to pay the monthly installments for Lot 23 in Lophcal Subdivision.

[Respondents] claimed that they were within their rights, as provided by P.D. 957, to stop paying the monthly amortizations since the [petitioners] failed to develop the subdivision. The issue, therefore, involves the rights and obligations of parties to a sale of real property, as regulated by P.D. 957.

When a complaint for unlawful detainer arises from the failure of a buyer on installment basis of real property to pay based on a right to stop paying monthly amortizations under PD 957, the determinative question is exclusively cognizable by the Housing and Land Use Regulatory Board (HLURB). Therefore, the question of the right to collect the monthly amortization must be determined by said agency (*Francel Realty Corporation vs. Court of Appeals*, 252 SCRA 129).

Section 3 of PD 957, provides:

"The National Housing Authority shall have exclusive jurisdiction to regulate the real estate trade and business in accordance with the provisions of this Decree."

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[19] *Id.* at 487-492.

[20] Records, Civil Case No. 993, Vol. II, p. 54.

[21] Records, CA-G.R. No. 61243, pp. 447-448.

[22] *Id.* at 454-460.

In Executive Order No. 90 dated December 17, 1986, the exclusive jurisdiction of National Housing Authority (NHA) over the above case was transferred to the HLURB.

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Where the law confines in an administrative office *quasi-judicial* functions, the jurisdiction of such office shall prevail over the court. Thus, the courts cannot or will not determine a controversy involving a question which is lodged with an administrative tribunal of special competence and when a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered (*Brett vs. IAC*, 191 SCRA 687; *Roxas and Co., Inc. vs. Court of Appeals*, 321 SCRA 106).

The MTC having no jurisdiction to entertain the case, it is also without jurisdiction to award damages to [petitioners]."[23]

Petitioners' motion for reconsideration of the foregoing decision was denied in the CA's 20 November 2002 resolution,[24] hence, this petition.

The Issues

Petitioners urge the reversal of the assailed decision on the following grounds:

I.

THE HONORABLE COURT OF APPEALS ERRED IN NOT RESOLVING THE ISSUE ON WHETHER RESPONDENTS FRANCISCO HAVE STILL LEGAL PERSONALITY TO PURSUE THE PETITION FOR REVIEW IN SPITE OF THE SEVERAL LAPSES THEY HAD COMMITTED BEFORE THE MUNICIPAL TRIAL COURT AND THE REGIONAL TRIAL COURT

II.

THE HONORABLE COURT OF APPEALS ERRED IN DECLARING THAT THE MUNICIPAL TRIAL COURT HAS NO JURISDICTION OVER THE SUBJECT COMPLAINT FOR

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[23] *Id.* at 458-459.

[24] *Id.* at 519-520.

EJECTMENT/UNLAWFUL DETAINER FILED BY PETITIONER CLEMENCIA CALARA AGAINST RESPONDENTS TERESITA AND JESUS FRANCISCO

III.

THE HONORABLE COURT OF APPEALS ERRED IN STATING THAT RESPONDENTS FRANCISCO HAD BOUGHT THE SUBJECT LOT FROM PETITIONER CALARA

IV.

THE HONORABLE COURT OF APPEALS ERRED IN DECLARING THAT THE HOUSING AND LAND USE REGULATORY BOARD (HLURB) HAS EXCLUSIVE ORIGINAL JURISDICTION TO DETERMINE WHETHER THERE IS A PERFECTED CONTRACT TO SELL BETWEEN PETITIONER CALARA AND RESPONDENTS FRANCISCO[25]

The Court's Ruling

We find the petition bereft of merit.

As a preliminary consideration, petitioners argue that respondents should not have been allowed to pursue their appeals in view of their numerous procedural lapses before the MTC, the RTC and the CA. Petitioners call attention to the fact that, instead of filing their answer in compliance with the MTC's 28 June 1983 resolution which denied their motion to dismiss, respondents filed a motion for reconsideration which was not acted upon in view of its being a prohibited motion under the *Rules on Summary Procedure*. Having filed their answer only on 6 June 1989, respondents are additionally taken to task by petitioners for filing their position paper only on 28 June 1999 or beyond the 29 May 1999 deadline set by the MTC. Considering respondents' added failure to file the requisite supersedeas bond during the pendency of their appeal before the RTC and their petition for review before the CA, petitioners further maintain that the MTC's 26 October 1999 decision had long become final and executory.[26]

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[25] *Rollo,* p. 7.

[26] *Id.* at 7-10; 261-264.

While it is true that the foregoing matters were raised by petitioners in their comment to respondents' petition for review before the CA,[27] our perusal of the record shows that respondents' 30 June 1983 motion for reconsideration of the MTC's 28 June 1983 resolution denying their motion to dismiss was filed before the 1 August 1983 effectivity of the *Rules on Summary Procedure*. Despite the ensuing prohibition against said motion and the MTC's long inaction thereon, however, petitioners appear to have made no move at all to submit the case for decision on the strength of the allegations of their complaint or, for that matter, to object to the MTC's directive for respondents to file their answer within 10 days from the 23 May 1989 hearing conducted in the case. Even with respondents' belated filing of their answer on 6 June 1989, petitioners also failed to cause the inclusion of the consequences of said procedural lapses among the issues identified for resolution in the 15 April 1999 Pre-Trial Order subsequently issued by the MTC.

The rule is settled that the determination of the issues at a pre-trial conference bars the consideration of other questions on appeal.[28] Having accepted the MTC's favorable 26 October 1999 decision which cited liberal construction of procedural rules in excusing respondents' tardy filing of their position paper,[29] petitioners were also resultantly barred from taking issue against the former's late filing of said position paper on 28 June 1999. With the RTC's 23 May 2000 decision in Civil Case No. 2866-99-C likewise not delving into the matter, we find that the CA cannot be faulted for brushing aside petitioners' belated harping over said procedural lapses in their comment to respondents' petition for review which was docketed thereat as CA-G.R. SP No. 6123. After all, points of law, theories, issues and arguments not brought to the attention of the trial court will not be and

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[27] *Id.* at 61-63.

[28] *Caltex (Philippines), Inc. v. Court of Appeals*, G.R. No. 97753, 10 August 1992, 212 SCRA 448, 462.

[29] Records, Civil Case No. 993, Vol. I, at 341.

ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal.[30]

Neither is there merit in petitioners' position that respondents' failure to file the required supersedeas bond had already rendered the MTC's 26 October 1999 decision final and executory. Although a decision in an ejectment case favorable to the plaintiff is immediately executory[31] unless a supersedeas bond is filed by the defendant,[32] the latter's failure to file said bond does not prejudice the appeal otherwise perfected in the premises. This is evident from Section 19, Rule 70 of the *1997 Rules of Civil Procedure* which, in part, provides as follows:

"Sec. 19. *Immediate execution of judgment, how to stay the same*. — If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay the execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with other papers, to the clerk of the Regional Trial Court to which the action is appealed.

All amounts so paid to the appellate court shall be deposited with said court or authorized government depositary bank, and shall be held there until the final disposition of the appeal, unless the court, by agreement of the interested parties, or in the absence of reasonable

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[30] *Almocera vs. Ong*, G.R. No. 170479, 18 February 2008, 546 SCRA 164, 178.

[31] *San Pedro vs. Court of Appeals*, G.R. No. 114300, 4 August 1994, 235 SCRA 145, 148.

[32] *Candido vs. Camacho*, 424 Phil. 291, 300 (2002).

grounds of opposition to a motion to withdraw, or for justifiable grounds, shall decree otherwise. *Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the appellate court, upon motion of the plaintiff, and upon proof of such failure, shall order the execution of the judgment appealed from with respect to the restoration of possession, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on the merits.*"[33]

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A similar dearth of merit may be said of petitioners' contention that the CA erred in discounting the MTC's jurisdiction over the complaint instituted *a quo*. Designed to provide an expeditious means of protecting actual possession or the right to possession of the property involved,[34] ejectment cases concededly fall within the original and exclusive jurisdiction of first level courts[35] by express provision of Section 33 of *Batas Pambansa Blg. 129*, in relation to Section 1, Rule 70 of the *1997 Rules of Civil Procedure*.[36] Considering that the same is determined by the allegations pleaded in the complaint and the character of the relief sought,[37] the rule is equally settled that jurisdiction in

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[33] Italics supplied.

[34] *Tubiano v. Razo*, 390 Phil. 863, 868 (2000).

[35] *Corpuz v. Court of Appeals*, G.R. No. 117005, 19 June 1997, 274 SCRA 275, 279.

[36] Section 1. *Who may institute proceedings, and when.* — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of a contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person may at anytime within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

[37] *Sudaria v. Quiambao*, G.R. No. 164305, 20 November 2007, 537 SCRA 689, 696.

ejectment cases cannot be made to depend upon the defences set up in the answer or pleadings filed by the defendant.[38]

However, our perusal of the record shows that the CA correctly ruled that the cause of action embodied in the original and amended complaint petitioners filed *a quo* was not a simple cause of action for unlawful detainer against respondents. Claiming that respondents offered to buy Lot 23 of the Lophcal Subdivision sometime in 1976 for the selling price of ₱80.00 per square meters, petitioners alleged, among other matters that, they accepted advance payments in the total sum of ₱8,093.00 from the former, on the condition that the transaction would only push through upon the parties execution of a written contract to sell; that aside from not making any further payments on the property, respondents have unjustifiably refused to heed their repeated demands for the execution of said contract to sell; that in view of their non-performance of the foregoing prestations, respondents were guilty of bad faith in constructing a house of strong materials on the Lot 23; and, that respondents stubborn refusal to heed the 20 March 1979 and 27 March 1982 demands to vacate respectively served by petitioner Clemencia Calara and her counsel left them no other recourse except to file the complaint for unlawful detainer from which the instant suit stemmed.[39]

In *Francel Realty Corporation vs. Sycip*,[40] the townhouse developer similarly filed a complaint for unlawful detainer against the buyer on the ground that the latter failed to pay the monthly amortizations stipulated in the parties' Contract to Sell. In his answer, the buyer alleged that he stopped payment of his monthly amortizations because the townhouse was defective and that he had already filed an action for unsound real estate business practice against the townhouse developer. While dismissing the complaint on the ground that jurisdiction over the case properly

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[38] *Larano v. Calendacion*, G.R. No. 158231, 19 June 2007, 525 SCRA 57, 65.

[39] Records, Civil Case No. 993, Vol. I, pp. 1-6; 102-107.

[40] 322 Phil. 138 (1996).

pertained to the HLURB, however, the MTC granted the buyer's counterclaims for moral and exemplary damages as well as attorney's fees. With the RTC's affirmance of the decision, the townhouse developer filed a petition for review with the CA which upheld the grant of damages on the ground that the MTC had jurisdiction over the complaint for unlawful detainer. In reversing the CA's decision, this Court ruled as follows:

> Petitioner's complaint is for unlawful detainer. While generally speaking such action falls within the original and exclusive jurisdiction of the MTC, the determination of the ground for ejectment requires a consideration of the rights of a buyer on installment basis of real property. Indeed private respondent claims that he has a right under P.D. No. 957, § 23 to stop paying monthly amortizations after giving due notice to the owner or developer of his decision to do so because of petitioner's alleged failure to develop the subdivision or condominium project according to the approved plans and within the time for complying with the same. The case thus involves a determination of the rights and obligations of parties in a sale of real estate under P.D. No. *957*. Private respondent has in fact filed a complaint against petitioner for unsound real estate business practice with the HLURB.
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> This is, therefore, not a simple case for unlawful detainer arising from the failure of the lessee to pay the rents, comply with the conditions of a lease agreement or vacate the premises after the expiration of the lease. Since the determinative question is exclusively cognizable by the HLURB, the question of the right of petitioner must be determined by the agency.
>
> Petitioner's cause of action against private respondent should instead be filed as a counterclaim in HLURB Case No. REM-07-9004-80 in accordance with Rule 6, § 6 of the Rules of Court which is of suppletory application to the 1987 HLURB Rules of Procedure per § 3 of the same. In the case of *Estate Developers and Investors Corporation v. Antonio Sarte and Erlinda Sarte* the developer filed a complaint to collect the balance of the price of a lot bought on installment basis, but its complaint was dismissed by the Regional Trial Court for lack of jurisdiction. It appealed the order to this Court. In dismissing the appeal, we held:
>
> > The action here is not a simple action to collect on a promissory note; it is a complaint to collect amortization

> payments arising from or in connection with a sale of a subdivision lot under P.D. Nos. 957 and 1344, and accordingly falls within the exclusive original jurisdiction of the HLURB to regulate the real estate trade and industry, and to hear and decide cases of unsound real estate business practices. Although the case involving Antonio Sarte is still pending resolution before the HLURB Arbiter, and there is as yet no order from the HLURB authorizing suspension of payments on account of the failure of plaintiff developer to make good its warranties, there is no question to Our mind that the matter of collecting amortizations for the sale of the subdivision lot is necessarily tied up to the complaint against the plaintiff and it affects the rights and correlative duties of the buyer of a subdivision lot as regulated by NHA pursuant to P.D. 957 as amended. It must accordingly fall within the exclusive original jurisdiction of the said Board, and We find that the motion to dismiss was properly granted on the ground that the regular court has no jurisdiction to take cognizance of the complaint."

In the case at bench, respondents similarly claimed in their answer that they stopped payments on Lot 23 in view of petitioners' failure to develop Lophcal (Calara) Subdivision. Prior to the commencement of the case for unlawful detainer before the MTC, respondent Jesus Francisco, along with other lot buyers at said subdivision, also filed a letter-complaint for violations of P.D. 957 which was docketed before HSRC as HSRC Case No. REM-060482-1043. In her answer to the complaint, petitioner Clemencia Calara alleged that the subdivision was not covered by P.D. 957 and that she was about to file complaints for ejectment against said buyers.[41] Even before the issues could be joined in the complaint for unlawful detainer petitioners filed against respondents, however, the record shows that a decision dated 4 June 1985 was rendered in HSRC Case No. REM-060482, holding petitioner Clemencia Calara liable for violation of P.D. 957, upon the following findings and conclusions:

> The ocular inspection of the subject subdivision conducted by this Commission on 16 August 1982 confirmed complainants'

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[41] Records, Civil Case No. 993, Vol. I, pp. 194-196.

allegations of non-development. It is, however, imperative that the issue on whether or not (the) subject subdivision is covered by P.D. 957 be resolved.

Section 2, paragraph (d) of P.D. 957 defines 'Subdivision Project' as a 'tract or a parcel of land registered under Act No. 496 which is partitioned primarily for residential purposes into individual lots with or without improvements thereon and offered to the public for sale, in cash or in installment terms. It shall include all residential, commercial, industrial and recreational areas, as well as open spaces, and other community and public areas in the project.'

It has been established from the evidence presented that all the elements of a subdivision project are present in this case. The land involved which is located at Bo. Anos, Los Baños, Laguna had been subdivided into 44 individual lots evidently for residential purposes as evidenced by the photocopy of the development plan of the said subdivision. Also, there had been an offering of the individual lots to the public for sale in installment basis as shown by the contract of sale executed by respondent in favor of complainants herein. Moreover, the lots, as contained in the contracts to sell, are registered under Act 496.

The foregoing circumstances clearly show that the land involved is a subdivision project the operation of which is subject to supervision and regulation by this Commission.[42]

Given the foregoing factual and procedural antecedents and the absence of showing that petitioner Clemencia Calara perfected an appeal from the foregoing decision, We find that the CA correctly ruled that the case petitioners filed before the MTC fell within the jurisdiction of the HLURB which, as a reconfiguration of the HSRC,[43] retained said office's regulatory and adjudicatory functions under Section 8[44] of E.O.

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[42] *Id.* at 73.

[43] Executive Order No. 90.

[44] Section 8. *Transfer of Functions*. — The regulatory functions of the National Housing Authority pursuant to Presidential Decrees No. 957, 1216, 1344 and other related laws are hereby transferred to the Commission, together with such applicable personnel, appropriation, records, equipment and property necessary for the enforcement and implementation of such functions. Among

648.[45] "When an administrative agency is conferred quasi-judicial functions, it has been ruled that all controversies relating to the subject matter pertaining to its specialization are deemed to be included within its jurisdiction" since "split jurisdiction is not favored."[46] This holds particularly true of the case at bench where, despite petitioner Clemencia Calara's failure to appeal the aforequoted decision of the HSRC, petitioners' pursuit of their complaint for unlawful detainer against respondents was accompanied by a defiance of said office's order to develop subdivision which had, in the meantime, been renamed as the San Isidro Village.[47]

The mere relationship of the parties as a subdivision developer/owner and subdivision lot buyer does not, concededly, vest the HLURB automatic jurisdiction over a case. In the cases of *Roxas vs. Court of Appeals*[48] and *Pilar Development Corporation vs. Sps. Villar*,[49] this Court upheld the MTC's jurisdiction over

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these regulatory functions are: (1) Regulation of the real estate trade and business; (2) Registration of subdivision lots and condominium projects; (3) Issuance of license to sell subdivision lots and condominium units in the registered units; (4) Approval of performance bond and the suspension of license to sell; (5) Registration of dealers, brokers and salesmen engaged in the business of selling subdivision lots or condominium units; (6) Revocation of registration of dealers, brokers and salesmen; (7) Approval or mortgage on any subdivision lot or condominium unit made by the owner or developer; (8) Granting of permits for the alteration of plans and the extension of period for completion of subdivision or condominium projects; (9) Approval of the conversion to other purposes of roads and open spaces found within the project which have been donated to the city or municipality concerned; (10) Regulation of the relationship between lessors and lessees; and (11) Hear and decide cases on unsound real estate business practices; claims involving refund filed against project owners, developers, dealers, brokers or salesmen and cases of specific performance.

[45] REORGANIZING THE HUMAN SETTLEMENTS REGULATORY COMMISSION.

[46] *Badillo vs. Court of Appeals*, G.R. No. 131903, 26 June 2008, 555 SCRA 435, 448, citing *Peña vs. GSIS*, 502 SCRA 383, 402.

[47] *Rollo*, pp. 203-205.

[48] 439 Phil. 966 (2002).

[49] G.R. No. 158840, 27 October 2006, 505 SCRA 617.

the complaint for ejectment commenced by the subdivision developer on account of the buyer's failure to pay the installments stipulated in the party's contract to sell. In said cases, however, the buyers had no justifiable ground to stop payment of the stipulated installments and/or any of the causes of action cognizable by the HLURB under Section 1[50] of P.D. 1344.[51] In not applying the ruling in *Francel Realty Corporation vs. Sycip*,[52] moreover, the Court likewise took appropriate note of the fact that the buyers in said cases have not commenced an action for unsound real estate businesses practices against the subdivision developers. Here, respondents have not only instituted a complaint for violation of P.D. 957 against petitioner Clemencia Calara but had also already obtained a definitive ruling on the latter's failure to fully develop the subdivision which they cited as justification for not making further payments on Lot No. 23 of the Lophcal (Calara) Subdivision.

In addition to respondents' failure to make further payments on Lot 23, petitioners have, of course, made much of the supposed fact that no contract of sale was perfected between the parties in view of the former's supposed refusal to execute the requisite Contract to Sell.[53] In this regard, petitioner calls our attention

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[50] Sec. 1. In the exercise of its function to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide the cases of the following nature:

a. Unsound real estate business practices;

b. Claims involving refund and any other claims *filed by* subdivision lot or condominium *unit buyer* against the project owner, developer, dealer, broker or salesman; and

c. Cases involving specific performance of contractual and statutory obligations *filed by buyers* of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.

[51] EMPOWERING THE NATIONAL HOUSING AUTHORITY TO ISSUE WRIT OF EXECUTION IN THE ENFORCEMENT OF ITS DECISION UNDER PRESIDENTIAL DECREE NO. 957, 2 April 1978.

[52] *Supra* note 40.

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

to the 18 October 2001 decision rendered by the CA's then Special Eighth Division in CA-G.R. SP No. 58498, the petition filed by Gaudencio Navarro for the review of the 7 March 2000 decision of Branch 35 of the RTC of Calamba which, in turn, affirmed the 26 October 1999 decision rendered by the MTC of Los Baños in favor of petitioners in Civil Case No. 994.[54] In said 18 October 2001 decision, the CA upheld the jurisdiction of the MTC over the complaint for ejectment similarly filed by petitioners against Gaudencio Navarro and discounted the existence of a perfected contract of sale between the parties for lack of concrete showing of "specific terms and conditions on the manner of payment" of the stipulated consideration for the lot purchased by said buyer.[55] For failure of Gaudencio Navarro to file a petition for review of said decision in CA-G.R. SP No. 58498, the corresponding Entry of Judgment was issued by the CA on 8 November 2001.[56]

As a consensual contract, however, it cannot be gainsaid that sale is perfected by mere consent,[57] which is manifested by a meeting of the minds as to the offer and acceptance thereof on the subject matter, price and terms of payment of the price.[58] That these essential requisites are present in the oral contract of sale between the parties may be readily gleaned from paragraph 3 of petitioners' own amended complaint which distinctly identified the Lot 23 of the Lophcal (Calara) Subdivision as the subject matter thereof and the price of ₱80.00 per square meter as the agreed consideration for its total area of 250 square meters.[59] Unlike their contract with Gaudencio Navarro, moreover, petitioners appear to have further agreed on the terms of payment

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[54] *Supra* note 7.

[55] *Rollo*, pp. 114-123.

[56] *Id.* at 124.

[57] *Amado v. Salvador*, G.R. No. 171401, 13 December 2007, 540 SCRA 161, 173.

[58] *Spouses Castillo v. Spouses Reyes*, G.R. No. 170917, 28 November 2007, 539 SCRA 193, 197.

[59] Records, Civil Case No. 993, Vol. I, p. 102.

of the price for the lot purchased by respondents. Having allowed the latter to build a house on said lot after accepting their initial payments in the aggregate sum of ₱7,948.00,[60] petitioner Clemencia Calara significantly specified the terms of payment agreed upon by the parties in the following 20 March 1979 demand letter she sent respondent Teresita Francisco,[61] to wit:

"Mangyari na sumulat uli ako sa iyo tungkol sa pagtanggi mong sumang-ayon at lumagda sa Kasunduan sa Pagbibil(i) ng Lote sa kabila ng iyong pakiusap mo noon sa akin na magpapagawa ka muna ng bahay bago ka lalagda sa sinasabing kasunduan. Sa hindi malamang dahilan ng matapos na ang iyong ipinagagawang bahay at kasunod na rin dito ang pag-aakupa ninyo nito, ay bigla ka na lang tumangging lumagda sa kasunduan at kasunod na rin ang pagtanggi mong magbayad ng kaukulang buwanang-hulog sa ninanais mong bilihing lote.

Sa pagkakataong ito ay muli kong ipina-aalala sa iyo na simula't mula pa ay alam mo na babayaran mo ang hinahangad mong bilihing lote sa paraang buwanang hulugan (equal monthly installment) sa halagang ₱361.00 sa loob ng anim na pung (60) buwan pagkatapos na mabayaran ang kaukulang labin limang (15%) por ciento ng kabuoang halaga ng lote bilang unang bayad o downpayment.

Dahil sa hindi mo pagtupad ng iyong tungkulin sa amin ay ikinalulungkot kong ipa-alam sa inyo na alisin mo ang iyong bahay sa lupang tinitirikan nito sa loob ng tatlumpung (30) araw pasimula sa pagkatanggap mo ng liham na ito, at gayon din ay umalis kayo at iwanan ang sinasabing lot ang walang pasubali."[62]

Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present.[63] Given the proven justification for respondents' stoppage of further payments on Lot 23, We find

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[60] *Id.* at 76-79, Exhibits "2" to "11".

[61] *Id.* at 7, Exhibit "A".

[62] Italics supplied.

[63] Art. 1356, *Civil Code of the Philippines.*

that respondents' alleged refusal to execute said contract only gives rise to a cause of action for specific performance pursuant to Articles 1357[64] and 1358[65] of the *Civil Code of the Philippines*. Insofar as it concerns the sale of subdivision lots, jurisdiction over such a case is vested with the HLURB under Section 8 (11) of E.O. 648. In the second *Francel Realty Corporation vs. Sycip*[66] case which dealt with the complaint for reconveyance and damages subsequently filed by the subdivision developer, this Court ruled that "the HLURB is not deprived of jurisdiction to hear and decide a case merely on the basis that it has been initiated by the developer and not by the buyer."

Finally, it bears emphasizing that more than 33 years have already elapsed from the time that petitioners and respondents agreed on the sale of Lot 23 of the Lophcal (Calara) Subdivision sometime in 1976. In the intervening period, the parties have not only filed their respective complaints before the HLURB and the MTC but had already performed acts and acquired rights, the myriad consequences of which could not possibly be squarely addressed in the case for unlawful detainer where possession is unlawfully withheld after the expiration or termination of the right to hold possession under any contract, express or implied.[67] As the sole regulatory body for housing and land

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[64] ART. 1357. If the law requires a document or other special forms, as in the acts or contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract.

[65] ART. 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2 and 1405.

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[66] G.R. No. 154684, 8 September 2005, 469 SCRA 424, 435.

[67] *Estrella v. Robles, Jr.*, G.R. No. 171029, 22 November 2007, 538 SCRA 60, 69.

development,[68] the HLURB has jurisdiction over petitioners' cause against respondents and is clearly the best forum for the determination of all the issues relevant thereto.

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 165923. September 29, 2010]

SHIMIZU PHILS. CONTRACTORS, INC.,[*] *petitioner, vs.* **VIRGILIO P. CALLANTA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL; A VALID EXERCISE OF MANAGEMENT PREROGATIVE; STRICT REQUIREMENTS.— As an authorized cause for separation from service under Article 283 of the Labor Code, retrenchment is a valid exercise of management prerogative subject to the strict requirements set by jurisprudence: (1) That the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de*

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[68] *Badillo v. Court of Appeals, supra* note 46 at 444.

[*] Sometimes referred to as Shimizu Philippines Contractors, Inc. or Shimizu Philippine Contractors, Inc. in some parts of the records.

minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (3) That the employer pays the retrenched employees separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher; (4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and (5) That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, x x x efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

2. ID.; ID.; ID.; THERE WAS SUBSTANTIAL COMPLIANCE FOR A VALID RETRENCHMENT; PETITIONER USED FAIR AND REASONABLE CRITERIA IN EFFECTING RETRENCHMENT.— We find that petitioner implemented its retrenchment program in good faith because it undertook several measures in cutting down its costs, to wit, withdrawing certain privileges of petitioner's executives and expatriates; limiting the grant of additional monetary benefits to managerial employees and cutting down expenses; selling of company vehicles; and infusing fresh capital into the company. Respondent did not attempt to refute that petitioner adopted these measures before implementing its retrenchment program. In fine, we hold that petitioner was able to prove that it incurred substantial business losses, that it offered to pay respondent his separation pay, that the retrenchment scheme was arrived at in good faith, and lastly, that the criteria or standard used in selecting the employees to be retrenched was work efficiency which passed the test of fairness and reasonableness.

3. ID.; ID.; ID.; 30-DAY NOTICE REQUIREMENT; NOT COMPLIED WITH; RESPONDENT IS ENTITLED TO INDEMNITY FOR VIOLATION OF DUE PROCESS.— Although there was authorized cause to dismiss respondent from the service, we find that petitioner did not comply with the 30-day notice requirement. Petitioner maintains that it substantially complied with the requirement of the law in that

it, in fact, submitted two notices or reports with the DOLE. However, petitioner admitted that the reports were submitted 21 days, in the case of the first notice, and 16 days, in the case of the second notice, before the intended date of respondent's dismissal. The purpose of the one month prior notice rule is to give DOLE an opportunity to ascertain the veracity of the cause of termination. Non-compliance with this rule clearly violates the employee's right to statutory due process. Consequently, we affirm the NLRC's award of indemnity to respondent for want of sufficient due notice. But to be consistent with our ruling in *Jaka Food Processing Corporation v. Pacot*, the indemnity in the form of nominal damages should be fixed in the amount of ₱50,000.00.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
Jose Allan N. Maglasang for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

By this Petition for Review on *Certiorari*,[1] Shimizu Phils. Contractors, Inc. (petitioner) assails the Decision[2] dated June 10, 2004 and Resolution[3] dated October 5, 2004 of the Court of Appeals (CA) in CA-G.R. SP. No. 66888, which reversed the Decision[4] dated December 14, 2000 of the National Labor Relations Commission (NLRC) and ordered petitioner to reinstate Virgilio P. Callanta (respondent) and pay him his backwages for not having been validly dismissed.

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[1] *Rollo,* pp. 3-28.

[2] Annex "A" of the Petition, *id.* at 30-37; penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Godardo A. Jacinto and Jose L. Sabio, Jr.

[3] Annex "B" of the Petition, *id.* at 48-49.

[4] Annex "C" of the Petition, *id.* at 60-75; penned by Commissioner Ireneo B. Bernardo and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.

Antecedent Facts

Petitioner, a corporation engaged in the construction business, employed respondent on August 23, 1994 as Safety Officer assigned at petitioner's Yutaka-Giken Project and eventually as Project Administrator of petitioner's Structural Steel Division (SSD) in 1995.

In a Memorandum dated June 7, 1997,[5] respondent was informed that his services will be terminated effective July 9, 1997 due to the lack of any vacancy in other projects and the need to re-align the company's personnel requirements brought about by the imperatives of maximum financial commitments.

Respondent then filed an illegal dismissal complaint against petitioner assailing his dismissal as without any valid cause.

Petitioner advanced that respondent's services was terminated in accordance with a valid retrenchment program being implemented by the company since 1996 due to financial crisis that plague the construction industry. To prove its financial deficit, petitioner presented financial statements for the years 1995 to 1997 as well as the Securities and Exchange Commission's approval of petitioner's application for a new paid-in capital amounting to ₱330,000,000. Petitioner alleged that in order not to jeopardize the completion of its projects, the abolition of several departments and the concomitant termination of some employees were implemented as each project is completed. When respondent's Honda Project was completed, petitioner offered respondent his separation pay which the latter refused to accept and instead filed an illegal dismissal complaint.

Respondent claimed that petitioner failed to comply with the requirements called for by law before implementing a retrenchment program thereby rendering it legally infirmed. First, it did not comply with the provision of the Labor Code mandating the service of notice of retrenchment. He pointed out that the notice sent to him never mentioned retrenchment but only project completion as the cause of termination. Also, the notice sent to

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

the Department of Labor and Employment (DOLE) did not conform to the 30-day prior notice requirement. Second, petitioner failed to use fair and reasonable criteria in determining which employees shall be retrenched or retained. As shown in the termination report[6] submitted to DOLE, he was the only one dismissed out of 333 employees. Worse, junior and inexperienced employees were appointed/assigned in his stead to new projects thus also ignoring seniority in hiring and firing employees.

In reply, petitioner reiterated its progressive implementation of the retrenchment program and finds this as basis why respondent's termination coincided with project completion. Petitioner argued that when it submitted the retrenchment notice/ termination report to DOLE, there was already substantial compliance with the requirement. It explained that such termination report reflects only the number of employees retrenched for the particular month of July of 1997 and cannot be deemed as evidence of the total number of employees affected by the retrenchment program. Petitioner also accused respondent of giving false narration of facts about his employment position and further disclosed that respondent has been saddled with complaints subject of administrative investigations for violations of several company rules, *i.e.*, cited for discrepancies in his time sheet,[7] unauthorized use of company vehicle,[8] stealing of company property[9] and abandonment of work,[10] so much so that petitioner's decision to appoint more competent and more senior employees in his stead cannot be questioned.

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[6] *Id.* at 69.

[7] See Memorandum dated March 16, 1996, Annexes "12" and "12-A" of petitioner's reply to respondent's position paper before the Labor Arbiter, *rollo*, pp. 167-169.

[8] See Incident Regulation Violation Report dated April 1, 1997, Annex "13", *id.* at 170.

[9] See Sworn Statement of Mr. Rolando Villon dated April 7, 1997, Annex "14", *id.* at 171-172.

[10] See Memorandum dated May 22, 1997, Annex "15," *id.* at 173.

Ruling of the Labor Arbiter

On April 14, 2000, the Labor Arbiter rendered a Decision[11] holding that respondent was validly retrenched. He found that sufficient evidence was presented to establish company losses; that petitioner offered respondent his separation pay; and that petitioner duly notified DOLE about the retrenchment. The Labor Arbiter further relied on petitioner's factual version relating to respondent's employment background with regard to his position and behavioral conduct.

Pertinent portions of the Labor Arbiter's Decision read:

> In terminating the services of complainant, respondent Shimizu had complied with the requirements of law on retrenchment. It had prepared a check for the amount of ₱ 29,320.30 as payment for his separation pay and other entitlements. However, as afore-stated, complainant refused to receive the amount, for reasons known only to him. Also, respondent company had duly notified the Department of Labor and Employment (DOLE) about the retrenchment of the complainant.
>
> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered dismissing the instant complaint for lack of merit.
>
> SO ORDERED.[12]

Ruling of the National Labor Relations Commission

Upon appeal, the NLRC upheld the ruling that there was valid ground for respondent's termination but modified the Labor Arbiter's Decision by holding that petitioner violated respondent's right to procedural due process. The NLRC found that petitioner failed to comply with the 30-day prior notice to the DOLE and that there is no proof that petitioner used fair and reasonable criteria in the selection of employees to be retrenched. The dispositive portion of the NLRC Decision reads:

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[11] Annex "D" of the Petition, *id.* at 50-59; penned by Labor Arbiter Enrico A.C. Portillo.

[12] *Id.* at 59.

WHEREFORE, in view of the foregoing, the finding of the Labor Arbiter *a quo* is MODIFIED.

Respondent Shimizu Philippine Contractor, Inc., is ordered to pay complainant-appellant Virgilio P. Callanta his separation pay equivalent to one (1) month pay for every year of service. For want of due notice, respondent is further directed to pay complainant an indemnity equivalent to one (1) month salary.

SO ORDERED.[13]

Both parties sought reconsideration of the NLRC's Decision. Respondent, in his Motion for Reconsideration,[14] attributed grave error upon the NLRC in ruling that the absence of fair and reasonable criteria in effecting the retrenchment affected only the requirements of due process, arguing that such failure should have invalidated the entire retrenchment program. Petitioner, for its part, filed a Motion for Partial Reconsideration[15] questioning the amount of separation pay awarded to respondent.

The NLRC, in its Resolution[16] dated June 29, 2001, denied respondent's motion and found merit in petitioner's motion by modifying the amount of separation pay to an amount equivalent to one month or one-half month pay for every year of service, whichever is higher, in consonance with Article 283 of the Labor Code. Thus:

WHEREFORE, premises considered, the complainant's Motion for Reconsideration is hereby DENIED for lack of merit. The respondent's partial motion for reconsideration is hereby GRANTED. Consequently, our Decision promulgated on December 14, 2000 is hereby MODIFIED in that the separation pay granted to complainant should be one (1) month pay or one-half (½) month pay for every year of service, whichever is higher, a fraction of at least six months to be considered one (1) whole year.

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[13] *Id.* at 74.

[14] CA *rollo*, pp. 30-36.

[15] *Id.* at 148-150.

[16] Annex "F" of the Petition, *rollo*, pp. 76-78.

Other dispositions in our said Decision stand Affirmed.

SO ORDERED.[17]

Ruling of the Court of Appeals

Undaunted, respondent filed a petition for *certiorari* with the CA. On June 10, 2004, the CA reversed and set aside the NLRC's ruling. The CA opined that petitioner failed to prove that there were employees other than respondent who were similarly dismissed due to retrenchment and that respondent's alleged replacements held much higher ranks and were more deserving employees. Moreover, there were no proofs to sustain that petitioner used fair and reasonable criteria in determining which employees to retrench. According to the CA, petitioner's failure to produce evidence raises the presumption that such evidence will be adverse to it. Consequently, the CA invalidated the retrenchment, held respondent to have been illegally dismissed, and ordered respondent's reinstatement and payment of backwages.

The dispositive portion of the Decision reads:

WHEREFORE, the assailed Decision dated December 14, 2000 and the Resolution dated June 29, 2001 both of the National Labor Relations Commission, Third Division in NLRC Case No. CA 024643-00 are REVERSED and SET ASIDE.

Private Respondent Shimizu Philippine Contractors, Inc. is hereby ORDERED to reinstate Petitioner VIRGILIO P. CALLANTA with backwages computed from the date of his dismissal on July 9, 1997 up to the finality of this Decision without loss of seniority rights and benefits appurtenant to his position.

SO ORDERED.[18]

The CA denied petitioner's Motion for Reconsideration[19] and reiterated that petitioner offered no proof of any standard or program intended to implement the retrenchment program.

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[17] *Id.* at 77.

[18] *Id.* at 36.

[19] Annex "B" of the Petition, *id.* at 38-46.

Issues

Thus, the instant petition raising the following issues:

A.

WHETHER X X X THE HONORABLE COURT OF APPEALS EXCEEDED ITS JURISDICTION WHEN IT REVERSED THE FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NLRC BY RE-EVALUATING THE EVIDENCE ON RECORD.

B.

WHETHER X X X THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT PETITIONER FAILED TO OBSERVE FAIR AND REASONABLE STANDARDS OR CRITERIA IN EFFECTING THE DISMISSAL OF [RESPONDENT].[20]

Petitioner contends that the CA's corrective power in petitions for *certiorari* is confined only to jurisdictional issues and a determination of whether there is grave abuse of discretion amounting to lack or excess of jurisdiction. It does not encompass the reevaluation and reassessment of factual findings and conclusions of the Labor Arbiter which should be accorded great weight and respect when affirmed by the NLRC. According to petitioner, the CA gravely erred in finding that no valid retrenchment exists contrary to the prior findings of the Labor Arbiter and NLRC.

Petitioner also insists that all the requisites for a valid retrenchment have been established by substantial evidence and that it observed fair and reasonable standards in implementing its retrenchment program, to wit: *ability to perform work efficiently* and *seniority*. As succinctly found by the Labor Arbiter, respondent is notorious for violating company rules which adversely reflected on his ability to perform work effectively. Petitioner further denies that junior officers/employees were retained and that respondent was singled out for termination.

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[20] *Id.* at 140.

Our Ruling

We find the petition meritorious.

At the outset, the power of the CA to review a decision of the NLRC "in a petition for *certiorari* under Rule 65 of the Rules of Court does not normally include an inquiry into the correctness of the NLRC's evaluation of the evidence."[21] However, under certain circumstances, the CA is allowed to review the factual findings or the legal conclusions of the NLRC in order to determine whether these findings are supported by the evidence presented and the conclusions derived therefrom are accurately ascertained.[22] It has been held that "[i]t is within the jurisdiction of the CA x x x to review the findings of the NLRC."[23]

From the foregoing, the CA, in the present case, cannot be faulted in re-evaluating the NLRC's findings as it can undoubtedly affirm, modify or reverse the same if the evidence warrants. Having settled thus, we shall now proceed to review whether the CA correctly appreciated the NLRC's finding and if the CA's resultant decision was in accord with law and evidentiary facts.

There was substantial compliance for a valid retrenchment; petitioner used fair and reasonable criteria in effecting retrenchment.

As an authorized cause for separation from service under Article 283 of the Labor Code,[24] retrenchment is a valid exercise

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[21] *AMA Computer College, Inc. v. Garcia,* G.R. No. 166703, April 14, 2008, 551 SCRA 254, 269.

[22] *Oriental Petroleum and Minerals Corporation v. Fuentes,* G.R. No. 151818, October 14, 2005, 473 SCRA 106, 114.

[23] *Emcor Incorporated v. Sienes,* G.R. No. 152101, September 8, 2009, 598 SCRA 617, 632.

[24] Art. 283. *CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL.* — The employer may also terminate the employment of any

of management prerogative subject to the strict requirements set by jurisprudence:

(1) That the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;

(2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;

(3) That the employer pays the retrenched employees separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher;

(4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and

(5) That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, x x x efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[25]

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

[25] *Asian Alcohol Corporation v. National Labor Relations Commission*, 364 Phil. 912, 926-927 (1999).

In the present case, both the Labor Arbiter and the NLRC found sufficient compliance with these substantive requirements, there being enough evidence to prove that petitioner was sustaining business losses, that separation pay was offered to respondent, and that notices of termination of service were furnished to respondent and DOLE. However, the NLRC modified the Decision of the Labor Arbiter by granting respondent indemnity since the notice to DOLE was served short of the 30-day notice requirement and that there is no proof of the use of fair and reasonable criteria in the selection of employees to be retrenched or retained. The CA, then, reversed the Decision of the NLRC by ruling that the absence of fair and reasonable criteria in implementing the retrenchment invalidates altogether the retrenchment.

Petitioner presented proof that it incurred substantial losses as shown by its financial statements and that it substantially complied with the requirements of serving written notices of retrenchment. It was also shown that it offered to pay respondent's separation pay. The CA, however, ruled that petitioner failed to show that it implemented its retrenchment program in a just and proper manner in the absence of reasonable criteria in effecting such.

We disagree. In implementing its retrenchment scheme, petitioner was constrained to streamline its operations and to downsize its complements in a progressive manner in order not to jeopardize the completion of its projects. Thus, several departments like the Civil Works Division, Electro-mechanical Works Division and the Territorial Project Management Offices, among others, were abolished in the early part of 1996 and thereafter the Structural Steel Division, of which respondent was an Administrator. Respondent was among the last batch of employees who were retrenched and by the end of year 1997, all of the employees of the Structural Steel Division were severed from employment.

Respondent, in any of the pleadings filed by him, never refuted the foregoing facts. Respondent's argument that he was singled out for termination as allegedly shown in petitioner's monthly

termination report for the month of July 1997 filed with the DOLE does not persuade this Court. Standing alone, this document is not proof of the total number of retrenched employees or that respondent was the only one retrenched. It merely serves as notice to DOLE of the names of employees terminated/ retrenched only for the month of July. In other words, it cannot be deemed as an evidence of the number of employees affected by the retrenchment program. Thus we cannot conclude that no other employees were previously retrenched.

Respondent then claimed that petitioner did not observe seniority in retrenching him. He further alleged that he is more qualified and efficient than those retained by petitioner. Notably, however, the records do not bear any proof that these allegations were substantiated. On the contrary, the Labor Arbiter found respondent's notoriety due to pieces of evidence showing numerous company violations imputed against respondent. This fact of being subject of several administrative investigations, respondent failed to refute. Moreover, the Labor Arbiter likewise found respondent guilty of several misrepresentations in the pleadings filed before the tribunal with regard to the latter's employment position. By advancing that other employees were less efficient, qualified and senior than him, respondent has the burden of proving these allegations which he failed to discharge.

On the contrary, we find that petitioner implemented its retrenchment program in good faith because it undertook several measures in cutting down its costs, to wit, withdrawing certain privileges of petitioner's executives and expatriates; limiting the grant of additional monetary benefits to managerial employees and cutting down expenses; selling of company vehicles; and infusing fresh capital into the company. Respondent did not attempt to refute that petitioner adopted these measures before implementing its retrenchment program.

In fine, we hold that petitioner was able to prove that it incurred substantial business losses, that it offered to pay respondent his separation pay, that the retrenchment scheme was arrived at in good faith, and lastly, that the criteria or standard used in selecting the employees to be retrenched was work efficiency which passed the test of fairness and reasonableness.

The termination notice sent to DOLE did not comply with the 30-day notice requirement, thus, respondent is entitled to indemnity for violation of due process.

However, although there was authorized cause to dismiss respondent from the service, we find that petitioner did not comply with the 30-day notice requirement. Petitioner maintains that it substantially complied with the requirement of the law in that it, in fact, submitted two notices or reports with the DOLE. However, petitioner admitted that the reports were submitted 21 days, in the case of the first notice, and 16 days, in the case of the second notice, before the intended date of respondent's dismissal.

The purpose of the one month prior notice rule is to give DOLE an opportunity to ascertain the veracity of the cause of termination.[26] Non-compliance with this rule clearly violates the employee's right to statutory due process.

Consequently, we affirm the NLRC's award of indemnity to respondent for want of sufficient due notice. But to be consistent with our ruling in *Jaka Food Processing Corporation v. Pacot*,[27] the indemnity in the form of nominal damages should be fixed in the amount of ₱50,000.00.

WHERFORE, the petition is *GRANTED*. The challenged June 10, 2004 Decision and October 5, 2004 Resolution of the Court of Appeals in CA- G.R. SP. No. 66888 are *REVERSED and SET ASIDE*. The Decision and Resolution of the National Labor Relations Commission dated December 14, 2000 and June 29, 2001, respectively, upholding the legality of respondent's dismissal and awarding him separation pay equivalent to one (1) month pay or one-half (½) month pay for every year of service, whichever is higher, are *REINSTATED* and *AFFIRMED*

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[26] *Mobilia Products, Inc. v. Demecillo,* G.R. No. 170669, February 4, 2009, 578 SCRA 39, 50.

[27] 494 Phil. 114, 122 (2005).

with *MODIFICATION* that the indemnity to be awarded to respondent is fixed in the amount of ₱50,000.00 as nominal damages.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 175124. September 29, 2010]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **THE PHILIPPINE AMERICAN LIFE AND GENERAL INSURANCE COMPANY,** *respondent.*

SYLLABUS

TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); CLAIM FOR TAX FUND; ONCE THE TAXPAYER EXERCISES THE OPTION TO CARRY-OVER AND APPLY THE EXCESS CREDITABLE TAX AGAINST THE INCOME TAX DUE FOR THE SUCCEEDING TAXABLE YEARS UNDER SECTION 76 OF THE NIRC, SUCH OPTION IS IRREVOCABLE.— It is undisputed that respondent indicated in its 1997 ITR its option to carry-over as tax credit for the next year its tax overpayment. In its 1998 ITR, respondent again indicated its preference to carry-over the excess income tax credit against the tax liabilities for the succeeding taxable years. Clearly, respondent chose to carry-over and apply the overpaid tax against the income tax due in the succeeding taxable years. Under Section 76 of the NIRC of 1997, once the taxpayer exercises the option to carry-over and apply the excess creditable tax against the income tax due for the succeeding taxable years, such option is irrevocable. Thus, respondent can no longer claim a refund of its excess income tax credit in the

taxable year 1997 because it has already opted to carry-over the excess income tax credit against the tax due in the succeeding taxable years.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Martin L. Buenaventura for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 26 June 2006 Decision[2] and the 12 October 2006 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 73427. The Court of Appeals reversed the 4 June 2002 Decision[4] and 2 October 2002 Resolution[5] of the Court of Tax Appeals (CTA) in CTA Case No. 5978.

The Facts

On 15 April 1998, The Philippine American Life and General Insurance Company (respondent) filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return (ITR) for the taxable year 1997,[6] declaring a net loss of ₱165,701,508.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 7-14. Penned by Associate Justice Enrico A. Lanzanas, with Associate Justices Bienvenido L. Reyes and Lucas P. Bersamin (now Associate Justice of this Court), concurring. The title of the Decision inadvertently misstated petitioner as "The Philippine Life and General Insurance Company" instead of "The Philippine **American** Life and General Insurance Company."

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

[4] *Id.* at 52-56.

[5] *Id.* at 58-62.

[6] *Id.* at 63-64; Annex "G".

On 16 December 1999, respondent filed with the BIR-Appellate Division a claim for refund in the amount of ₱9,326,979.35, representing a portion of its accumulated creditable withholding tax. The amount of ₱9,326,979.35 allegedly represents the creditable taxes withheld and remitted to the BIR by respondent's withholding agents from rentals and real property and dividend income during the calendar year 1997.

When the BIR-Appellate Division failed to act on respondent's claim, respondent filed with the CTA a petition for review on 23 December 1999. Respondent sought a refund in the amount of ₱9,326,979.35, which allegedly represented a portion of its overpaid and unapplied creditable taxes for the calendar year 1997. Respondent attached its 1998 ITR[7] to its Memorandum dated 7 January 2002.

In its Decision dated 4 June 2002, the CTA denied respondent's claim for refund for lack of merit due to respondent's failure to present its 1998 ITR.

Respondent filed a motion for reconsideration, which the CTA denied in its Resolution dated 2 October 2002. In denying the motion, the CTA stated:

> But even assuming for the sake of argument that we consider the 1998 Annual ITR which petitioner [The Philippine American Life and General Insurance Company] attached to its memorandum, the same would likewise not render support to petitioner's claim. Petitioner could not deny the fact that the alleged 1997 overpaid tax was indeed carried forward to the succeeding taxable year. From the face of the 1998 ITR, the amount ₱19,522,305 to which the 1997 tax refund claim of ₱9,326,979.35 formed part is indicated as "Prior year's excess credit." Considering that petitioner had a tax due of ₱8,025,705 for the year 1998, petitioner's allegation of non-use deserves scant consideration. Equally noteworthy is the fact that the excess portion of the 1997 tax credit after charging the 1998 tax due now forms part of the 1998 total overpaid tax which petitioner opted again to carry over to the next taxable year 1999. This further refutes its claim that the 1997 claimed amount was unutilized.

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[7] Annex "F".

As a recapitulation, the 1998 Income Tax Return attached to the Memorandum for petitioner is inadmissible in evidence. It was not presented and identified during the trial nor formally offered as evidence. And as the amount being claimed had been charged against its tax liabilities for 1998 and 1999, the claim for refund cannot be granted.[8]

Respondent appealed to the Court of Appeals which rendered its Decision dated 26 June 2006, reversing the CTA Decision and Resolution. The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, the petition is hereby GRANTED. The assailed Decision and Resolution of the Court of Tax Appeals in CTA Case No. 5978 dated 4 June 2002 and 2 October 2002 respectively are REVERSED and SET ASIDE and a new one rendered in favor of the petitioner [The Philippine American Life and General Insurance Company] ordering the refund of the sum of ₱9,326,979.35 representing petitioner's overpayment and unapplied creditable withholding tax for the taxable year 1997 to petitioner.

SO ORDERED.[9]

The Commissioner of Internal Revenue (petitioner) filed a motion for reconsideration, which the Court of Appeals denied in its Resolution dated 12 October 2006. Hence, this petition for review.

The Ruling of the Court of Appeals

The Court of Appeals ruled that the CTA is not governed strictly by technical rules of evidence. Although respondent may have failed to strictly comply with the rules of procedure, the Court of Appeals held that respondent has established its claim for refund. The Court of Appeals stated that the 1998 ITR which respondent attached to its Memorandum filed with the CTA showed that respondent suffered a net loss in the amount of ₱165,701,508 and that respondent is entitled to a refund of

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[8] *Id.* at 61-62.

[9] *Id.* at 13.

₱9,326,979.35. Furthermore, the 1998 ITR showed that the amount of ₱9,326,979.35 was not utilized nor used as income tax payment for that taxable year. Thus, the Court of Appeals concluded that respondent is entitled to a refund of the unused creditable withholding tax.

The Issue

The sole issue in this case is whether respondent is entitled to a refund of its excess income tax credit in the taxable year 1997 even if it had already opted to carry-over the excess income tax credit against the tax due in the succeeding taxable years.

The Ruling of the Court

We find the petition meritorious.

The resolution of the case involves the application of Section 76 of the National Internal Revenue Code (NIRC) of 1997, which reads:

> SEC. 76. *Final Adjustment Return*. — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> **In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore.** (Emphasis supplied)

Petitioner maintains that Section 76 of the NIRC of 1997 clearly states that once a corporate taxpayer opts to carry-over the excess income tax and apply it as tax credits against the income tax due for the succeeding taxable years, such option is irrevocable and the corporate taxpayer can no longer apply for either a tax refund or an issuance of a tax credit certificate.[10]

On the other hand, respondent argues that the choice of the taxpayer to carry-over its excess tax credits to the succeeding taxable year does not necessarily preclude the taxpayer from requesting a tax refund when there was no actual carry-over of the tax credits due to a net loss suffered by the taxpayer in the succeeding year. Respondent alleges that there was no actual carry-over of its 1997 excess tax credits because its tax credits accumulated over the years were much more than the ensuing tax liabilities.[11]

The issue presented in this case is identical to the issue already resolved by the Court in the recent case of *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue*.[12] In *Asiaworld*, the issue was whether the exercise of the option to carry-over the excess income tax credit, which shall be applied against the tax due in the succeeding taxable years, prohibits the claim for a refund in the subsequent taxable years for the unused portion of the excess tax credits. Ruling that the exercise of the option to carry-over precludes a claim for a refund, the Court explained:

> Section 76 of the NIRC of 1997 clearly states: "Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore." Section 76 expressly states that "the option shall be considered irrevocable for that taxable period" — referring to the period comprising the "succeeding taxable

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

[11] *Id.* at 78.

[12] G.R. No. 171766, 29 July 2010.

years." Section 76 further states that "no application for cash refund or issuance of a tax credit certificate shall be allowed therefore" — referring to "that taxable period" comprising the "succeeding taxable years."

Section 76 of the NIRC of 1997 is different from the old provision, Section 69 of the 1977 NIRC, which reads:

> SEC. 69. *Final Adjustment Return*. — Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:
>
> (a) Pay the excess tax still due; or
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

Under this old provision, the option to carry-over the excess or overpaid income tax for a given taxable year is limited to the immediately succeeding taxable year only. In contrast, under Section 76 of the NIRC of 1997, the application of the option to carry-over the excess creditable tax is not limited only to the immediately following taxable year but extends to the next succeeding taxable years. The clear intent in the amendment under Section 76 is to make the option, once exercised, irrevocable for the "succeeding taxable years."

Once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized. (Emphasis supplied)

In this case, it is undisputed that respondent indicated in its 1997 ITR its option to carry-over as tax credit for the next year its tax overpayment. In its 1998 ITR, respondent again indicated its preference to carry-over the excess income tax credit against the tax liabilities for the succeeding taxable years. Clearly, respondent chose to carry-over and apply the overpaid tax against the income tax due in the succeeding taxable years. Under Section 76 of the NIRC of 1997, once the taxpayer exercises the option to carry-over and apply the excess creditable tax against the income tax due for the succeeding taxable years, such option is irrevocable.[13] Thus, respondent can no longer claim a refund of its excess income tax credit in the taxable year 1997 because it has already opted to carry-over the excess income tax credit against the tax due in the succeeding taxable years.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 26 June 2006 Decision and the 12 October 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 73427. We *REINSTATE* the 4 June 2002 Decision and 2 October 2002 Resolution of the Court of Tax Appeals in CTA Case No. 5978.

SO ORDERED.

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

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[13] *Commissioner of Internal Revenue v. Bank of Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219.

[*] Designated additional member per Raffle dated 27 September 2010.

FIRST DIVISION

[G.R. Nos. 178222-23. September 29, 2010]

MANILA MINING CORP. EMPLOYEES ASSOCIATION-FEDERATION OF FREE WORKERS CHAPTER, SAMUEL G. ZUÑIGA, in his capacity as President, *petitioners, vs.* **MANILA MINING CORP. and/or ARTEMIO F. DISINI, President, RENE F. CHANYUNGCO, (SVP-Treasurer), RODOLFO S. MIRANDA, (VP-Controller), VIRGILIO MEDINA (VP), ATTY. CRISANTO MARTINEZ (HRD), NIGEL TAMLYN (Resident Manager), BRYAN YAP (VP), FELIPE YAP (Chairman of the Board), and the NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION),** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; UNFAIR LABOR PRACTICES; THE CALL OF THE EMPLOYER FOR A SUSPENSION OF THE COLLECTIVE BARGAINING AGREEMENT NEGOTIATIONS CANNOT BE EQUATED TO "REFUSAL TO BARGAIN" AND THEREFORE COULD NOT BE CONSIDERED AS AN UNFAIR LABOR PRACTICE.— The lay-off is neither illegal nor can it be considered as unfair labor practice. Despite all efforts exerted by MMC, it did not succeed in obtaining the consent of the residents of the community where the tailings pond would operate, one of the conditions imposed by DENR-EMB in granting its application for a permanent permit. It is precisely MMC's faultless failure to secure a permit which caused the temporary shutdown of its mining operations. As aptly put by the Court of Appeals: The evidence on record indeed clearly shows that MMC's suspension of its mining operations was bonafide and the reason for such suspension was supported by substantial evidence. MMC cannot conduct mining operations without a tailings disposal system. For this purpose, MMC operates TP No. 7 under a valid permit from the Department of Environment and Natural Resources (DENR)

through its Environmental Management Bureau (EMB). In fact, a "Temporary Authority to Construct and Operate" was issued on January 25, 2001 in favor of MMC valid for a period of six (6) months or until July 25, 2001. The NLRC did not dispute MMC's claim that it had timely filed an application for renewal of its permit to operate TP No. 7 but that the renewal permit was not immediately released by the DENR-EMB, hence, MMC was compelled to temporarily shutdown its milling and mining operations. **Here, it is once apparent that the suspension of MMC's mining operations was not due to its fault nor was it necessitated by financial reasons.** Such suspension was brought about by the non-issuance of a permit for the continued operation of TP No. 7 without which MMC cannot resume its milling and mining operations. x x x. Unfair labor practice cannot be imputed to MMC since, as ruled by the Court of Appeals, the call of MMC for a suspension of the CBA negotiations cannot be equated to "refusal to bargain." Article 252 of the Labor Code defines the phrase "duty to bargain collectively," to wit: **ARTICLE 252.** ***Meaning of duty to bargain collectively*****.** — The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreements [and executing a contract incorporating such agreements] if requested by either party but such duty does not compel any party to agree to a proposal or to make any concession.

2. ID.; ID.; ID.; FOR A CHARGE OF UNFAIR LABOR PRACTICE TO PROSPER, IT MUST BE SHOWN THAT THE EMPLOYER WAS MOTIVATED BY ILL-WILL, BAD FAITH OR FRAUD, OR WAS OPPRESSIVE TO LABOR.— For a charge of unfair labor practice to prosper, it must be shown that the employer was motivated by ill-will, bad faith or fraud, or was oppressive to labor. The employer must have acted in a manner contrary to morals, good customs, or public policy causing social humiliation, wounded feelings or grave anxiety. While the law makes it an obligation for the employer and the employees to bargain collectively with each other, such

compulsion does not include the commitment to precipitately accept or agree to the proposals of the other. All it contemplates is that both parties should approach the negotiation with an open mind and make reasonable effort to reach a common ground of agreement. The Union based its contention on the letter request by MMC for the suspension of the collective bargaining negotiations until it resumes operations. Verily, it cannot be said that MMC deliberately avoided the negotiation. It merely sought a suspension and in fact, even expressed its willingness to negotiate once the mining operations resume. There was valid reliance on the suspension of mining operations for the suspension, in turn, of the CBA negotiation. The Union failed to prove bad faith in MMC's actuations.

3. ID.; ID.; TERMINATION OF EMPLOYMENT; CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL; A PREROGATIVE OF THE EMPLOYER; PAYMENT OF SEPARATION PAY IS MANDATORY UNDER THE LAW.— As correctly elucidated upon by the Court of Appeals: We observe that MMC was forced by the circumstances, hence, it resorted to a temporary suspension of its mining and milling operations. It is clear that MMC had no choice. It would be well to reiterate at this juncture that the reason for such suspension cannot be attributed to DENR-EMB. It is thus, evident, that the MMC declared temporary suspension of operations to avert further losses. The decision to suspend operation ultimately lies with the employer, who in its desire to avert possible financial losses, declares, as here, suspension of operations. Article 283 of the Labor Code applies to MMC and it provides: **ARTICLE 283.** *Closure of establishment and reduction of personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year

of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. Said provision is emphatic that an employee, who was dismissed due to cessation of business operation, is entitled to the separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. And it is jurisprudential that separation pay should also be paid to employees even if the closure or cessation of operations is not due to losses.

4. ID.; ID.; ID.; ID.; SEVERE FINANCIAL LOSSES DOES NOT EXEMPT EMPLOYER FROM PAYING SEPARATION BENEFITS TO DISMISSED EMPLOYEES.— The Court is not impressed with the claim that actual severe financial losses exempt MMC from paying separation benefits to complainants. In the first place, MMC did not appeal the decision of the Court of Appeals which affirmed the NLRC's award of separation pay to complainants. MMC's failure had the effect of making the awards final so that MMC could no longer seek any other affirmative relief. In the second place, the non-issuance of a permit forced MMC to permanently cease its business operations, as confirmed by the Court of Appeals. Under Article 283, the employer can lawfully close shop anytime as long as cessation of or withdrawal from business operations is *bona fide* in character and not impelled by a motive to defeat or circumvent the tenurial rights of employees, and as long as he pays his employees their termination pay in the amount corresponding to their length of service. The cessation of operations, in the case at bar is of such nature. It was proven that MMC stopped its operations precisely due to failure to secure permit to operate a tailings pond. Separation pay must nonetheless be given to the separated employees.

APPEARANCES OF COUNSEL

Ronald Rex S. Recidoro for respondents.

D E C I S I O N

PEREZ, *J.*:

This petition for review on *certiorari* seeks a reversal of the 30 June 2006 Decision[1] of the Court of Appeals in CA-G.R. SP No. 86073 and its Resolution[2] in the same case dated 30 May 2007.

Respondent Manila Mining Corporation (MMC) is a publicly-listed corporation engaged in large-scale mining for gold and copper ore. MMC is required by law to maintain a tailings containment facility to store the waste material generated by its mining operations. Consequently, MMC constructed several tailings dams to treat and store its waste materials. One of these dams was Tailings Pond No. 7 (TP No. 7), which was constructed in 1993 and was operated under a permit issued by the Department of Environment and Natural Resources (DENR), through its Environmental Management Bureau (EMB) in Butuan City, Agusan del Norte.[3]

On 10 January 2000, eleven (11) rank-and-file employees of MMC, who later became complainants before the labor arbiter, attended the organizational meeting of MMC-Makati Employees Association-Federation of Free Workers Chapter (Union). On 3 March 2000, the Union filed with the Department of Labor and Employment (DOLE) all the requirements for its registration. The Union acquired its legitimate registration status on 30 March 2000. Subsequently, it submitted letters to MMC relating its intention to bargain collectively. On 11 July 2001, the Union submitted its Collective Bargaining Agreement (CBA) proposal to MMC.

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[1] Penned by Associate Justice Bienvenido I. Reyes with Associate Justices Regalado E. Maambong and Enrico A. Lanzanas, concurring. *Rollo,* pp. 39-59.

[2] *Id.* at 61-64.

[3] *Id.* at 482.

Upon expiration of the tailings permit on 25 July 2001, DENR-EMB did not issue a permanent permit due to the inability of MMC to secure an Environmental Compliance Certificate (ECC). An essential component of an ECC is social acceptability or the consent of the residents in the community to allow TP No. 7 to operate, which MMC failed to obtain.[4] Hence, it was compelled to temporarily shut down its mining operations, resulting in the temporary lay-off of more than 400 employees in the mine site.

On 30 July 2001, MMC called for the suspension of negotiations on the CBA with the Union until resumption of mining operations.[5]

Among the employees laid-off, complainants Samuel Zuñiga, Myrna Maquio, Doroteo Torre, Arsenio Mark Perez, Edmundo Galvez, Diana Ruth Rellores, Jonathan Araneta, Teresita Lagman, Reynaldo Anzures, Gerardo Opena, and Edwin Tuazon, together with the Union filed a complaint before the labor arbiter[6] on even date praying for reinstatement, recognition of the Union as the sole and exclusive representative of its rank-and-file employees, and payment of moral and exemplary damages and attorney's fees.[7]

In their Position Paper,[8] complainants challenged the validity of their lay-off on the averment that MMC was not suffering from business losses. They alleged that MMC did not want to bargain collectively with the Union, so that instead of submitting their counterproposal to the CBA, MMC decided to terminate all union officers and active members. Petitioners questioned the timing of their lay-off, and alleged that first, there was no showing that cost-cutting measures were taken by MMC; second, no criteria were employed in choosing which employees to lay-off; and third, the individuals laid-off were those who signed

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[4] *Id.* at 355.

[5] CA *rollo,* p. 147.

[6] Florentino R. Darlucio.

[7] Records, p. 74.

[8] CA *rollo,* pp. 87-402.

the attendance sheet of the union organizational meeting. Petitioners likewise claimed that they were denied due process because they were not given a 30-day notice informing them of the lay-off. Neither was the DOLE informed of this lay-off, as mandated by law.[9]

Respondents justified the temporary lay-off as *bona fide* in character and a valid management prerogative pending the issuance of the permit to continuously operate TP No. 7.

The labor arbiter ruled in favor of MMC and held that the temporary shutdown of the mining operation, as well as the temporary lay-off of the employees, is valid.[10]

On appeal, the National Labor Relations Commission (NLRC) modified the judgment of the labor arbiter and ordered the payment of separation pay equivalent to one month pay for every year of service. It ratiocinated that the temporary lay-off, which exceeded more than six (6) months, had the effect of severance of the employer-employee relationship. The dispositive portion of the Decision read:

WHEREFORE, the assailed decision is, as it is hereby, Vacated and Set Aside and a new one entered ordering respondent Manila Mining Corporation to pay the individual complainants their separation pay computed as follows:

1.	**Samuel G. [Z]uñiga**	From Feb. 1, 1995 to July 27, 2001 = 7 yrs.	
		₱14,300/mo.	
	₱14,300 x 7 yrs. x ½		₱ 50,050.00
2.	**Myrna Maquio**	From March 1992 to July 27, 2001 = 9 yrs.	
		₱14,000/mo.	
	₱14,000 x 9 yrs. x ½		₱ 63,000.00

[9] *Id.* at 86-92.

[10] *Rollo*, p. 73.

3.	**Doroteo J. Torre**	From July 1983 to July 27, 2001 = 18 yrs.	
		₱10,000/mo.	
		₱10,000 x 18 yrs. x ½	₱ 90,000.00
4.	**Arsenio Mark M. Perez**	From June 1996 to July 27, 2001 = 5 yrs.	
		₱9,500/mo.	
		₱9,500 x 5 yrs. x ½	₱ 23,750.00
5.	**Edmundo M. Galvez**	From June 1997 to July 27, 2001 = 4 yrs.	
		₱9,500/mo.	
		₱9,500 x 4 yrs. x ½	₱ 19,000.00
6.	**Jonathan Araneta**	From March 1992 to July 27, 2001 = 9 yrs.	
		₱15,500/mo.	
		₱15,500 x 9 yrs. x ½	₱ 69,750.00
7.	**Teresita D. Lagman**	From August 1980 to July 27, 2001 = 20 yrs.	
		₱10,900/mo.	
		₱10,900 x 20 yrs. x ½	₱109,000.00
8.	**Gerardo Opena**	From October 1997 to July 27, 2001 = 4 yrs.	
		₱8,250/mo.	
		₱8,250 x 4 yrs. x ½	₱ 16,500.00
9.	**Edwin Tuazon**	From August 1994 to July 27, 2001 = 8 yrs.	
		₱7,000/mo.	
		₱7,000 x 8 yrs. x ½	₱ 28,000.00
		GRAND TOTAL	**₱469,050.00**

In addition respondent company is hereby ordered to pay attorney's fees to complainants equivalent to 10% of the award. [11]

In an Order[12] dated 31 May 2004, the NLRC affirmed its Resolution.

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[11] *Id.* at 117-119.

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

Dissatisfied, both parties separately filed their petitions for *certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 86073 and CA G.R. SP No. 86163.

The two petitions were consolidated upon motion by MMC in a Resolution dated 3 February 2005.

In its Decision dated 30 June 2006, the Court of Appeals modified the NLRC ruling, thus:

> WHEREFORE, the instant petition is partially GRANTED and the challenged Resolution dated August 29, 2003 of public respondent National Labor Relations Commission in NLRC NCR CA No. 033111-(CA No. 033111-02) is MODIFIED insofar as it holds MMC liable to pay the Union attorney's fees equivalent to 10% of the award, which portion of the questioned decision is now SET ASIDE.
>
> The monetary award of separation pay is maintained, but is MODIFIED from one (1) month pay for every year of service to ONE-HALF (½) MONTH PAY for every year of service, a fraction of at least six (6) months being considered as one (1) whole year.[13]

Both parties filed their respective motions for reconsideration but in a Resolution dated 30 May 2007, the Court of Appeals denied the motions for lack of merit.[14]

Only the Union elevated the case to this Court *via* the instant petition for review on *certiorari*. The Union attributes bad faith on the part of MMC in implementing the temporary lay-off resulting in the complainants' constructive dismissal. The Union alleges that the failure to obtain a permit to operate TP No. 7 is largely due to failure on the part of MMC to comply with the DENR-EMB's conditions.[15]

The Union claims that the temporary lay-off was effected without any proper notice to the DOLE as mandated by Article 283 of the Labor Code. It further maintains that MMC did not

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[13] *Id.* at 59.

[14] *Id.* at 63-64.

[15] *Id.* at 15.

observe the jurisprudential criteria in the selection of the employees to be laid-off.[16]

The Union insists that MMC is guilty of unfair labor practice when it unilaterally suspended the negotiation for a CBA. The Union avers that the lay-off and subsequent termination of complainants were due to the formation of the union at MMC.[17]

MMC defends the temporary lay-off of the employees as valid and done in the exercise of management prerogative. It concedes that upon expiration of the 6-month period, coupled with losses suffered by MMC, the complainants were constructively dismissed. However, MMC takes exception to the application of Article 286 of the Labor Code in that the 6-month period cannot and will not apply to the instant case in order to consider the employees terminated and to support the payment of separation pay. MMC explains that the 6-month period does not refer to a situation where the employer does not have any control over the nature, extent and period of the temporary suspension of operations. MMC adds that the suspension of MMC's operations is left primarily to the discretion of the DENR-EMB, which has the authority to issue MMC's permit to operate TP No. 7.[18]

MMC further submits that where the closure is due to serious business losses, such as in this case where the aggregate losses amounted to over ₱880,000,000.00, the law does not impose any obligation upon the employer to pay separation benefits.[19]

With respect to the charge of unfair labor practice, MMC avers that it merely deferred responding to the Union's letter-proposal until the resumption of its mining operations. It went to claim further that the employment relationship between the

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[16] *Id.* at 16.

[17] *Id.* at 30.

[18] *Id.* at 364.

[19] *Id.* at 375.

parties was suspended at the time the request to bargain was made.[20]

The issue of MMC's temporary suspension of business operations resulting in the temporary lay-off of some of its employees was squarely addressed by the labor tribunals and the Court of Appeals. They sustained in unison the validity of the temporary suspension, as well as the temporary lay-off.

We agree. The lay-off is neither illegal nor can it be considered as unfair labor practice.

Despite all efforts exerted by MMC, it did not succeed in obtaining the consent of the residents of the community where the tailings pond would operate, one of the conditions imposed by DENR-EMB in granting its application for a permanent permit. It is precisely MMC's faultless failure to secure a permit which caused the temporary shutdown of its mining operations. As aptly put by the Court of Appeals:

> The evidence on record indeed clearly shows that MMC's suspension of its mining operations was bonafide and the reason for such suspension was supported by substantial evidence. MMC cannot conduct mining operations without a tailings disposal system. For this purpose, MMC operates TP No. 7 under a valid permit from the Department of Environment and Natural Resources (DENR) through its Environmental Management Bureau (EMB). In fact, a "Temporary Authority to Construct and Operate" was issued on January 25, 2001 in favor of MMC valid for a period of six (6) months or until July 25, 2001. The NLRC did not dispute MMC's claim that it had timely filed an application for renewal of its permit to operate TP No. 7 but that the renewal permit was not immediately released by the DENR-EMB, hence, MMC was compelled to temporarily shutdown its milling and mining operations. **Here, it is once apparent that the suspension of MMC's mining operations was not due to its fault nor was it necessitated by financial reasons.** Such suspension was brought about by the non-issuance of a permit for the continued operation of TP No. 7 without which MMC cannot resume its milling and mining operations. x x x.[21] [Emphasis supplied.]

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[20] *Id.* at 384.

[21] *Id.* at 48-49.

Unfair labor practice cannot be imputed to MMC since, as ruled by the Court of Appeals, the call of MMC for a suspension of the CBA negotiations cannot be equated to "refusal to bargain."

Article 252 of the Labor Code defines the phrase "duty to bargain collectively," to wit:

ARTICLE 252. ***Meaning of duty to bargain collectively.*** — The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreements [and executing a contract incorporating such agreements] if requested by either party but such duty does not compel any party to agree to a proposal or to make any concession.

For a charge of unfair labor practice to prosper, it must be shown that the employer was motivated by ill-will, bad faith or fraud, or was oppressive to labor. The employer must have acted in a manner contrary to morals, good customs, or public policy causing social humiliation, wounded feelings or grave anxiety. While the law makes it an obligation for the employer and the employees to bargain collectively with each other, such compulsion does not include the commitment to precipitately accept or agree to the proposals of the other. All it contemplates is that both parties should approach the negotiation with an open mind and make reasonable effort to reach a common ground of agreement.[22]

The Union based its contention on the letter request by MMC for the suspension of the collective bargaining negotiations until it resumes operations.[23] Verily, it cannot be said that MMC deliberately avoided the negotiation. It merely sought a suspension and in fact, even expressed its willingness to negotiate once the mining operations resume. There was valid reliance on the

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[22] *Union of Filipro Employer-Drug, Food and Allied Industries Unions-Kilusang Mayo Uno v. Nestle Philippines, Incorporated*, G.R. Nos. 158930-31, 3 March 2008, 547 SCRA 323, 333-334.

[23] CA *rollo*, p. 147.

suspension of mining operations for the suspension, in turn, of the CBA negotiation. The Union failed to prove bad faith in MMC's actuations.

Even as we declare the validity of the lay-off, we cannot say that MMC has no obligation at all to the laid-off employees. The validity of its act of suspending its operations does not excuse it from paying separation pay.

MMC seeks refuge in Article 286 which provides:

ART. 286. ***When employment not deemed terminated.*** **—** The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

Article 286 of the Labor Code allows the *bona fide* suspension of operations for a period not exceeding six (6) months. During the suspension, an employee is not deemed terminated. As a matter of fact, the employee is entitled to be reinstated once the employer resumes operations within the 6-month period. However, Article 286 is silent with respect to the rights of the employee if the suspension of operations lasts for more than 6 months. Thus is bred the issue regarding the responsibility of MMC toward its employees.

MMC subscribes to the view that for purposes of determining employer responsibility, an employment should likewise not be deemed terminated, should the suspension of operation go beyond six (6) months as long as the continued suspension is due, as in this case, to a cause beyond the control of the employer.

We disagree.

As correctly elucidated upon by the Court of Appeals:

We observe that MMC was forced by the circumstances, hence, it resorted to a temporary suspension of its mining and milling

operations. It is clear that MMC had no choice. It would be well to reiterate at this juncture that the reason for such suspension cannot be attributed to DENR-EMB. It is thus, evident, that the MMC declared temporary suspension of operations to avert further losses.[24]

The decision to suspend operation ultimately lies with the employer, who in its desire to avert possible financial losses, declares, as here, suspension of operations.

Article 283 of the Labor Code applies to MMC and it provides:

ARTICLE 283. *Closure of establishment and reduction of personnel.* **—** The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Said provision is emphatic that an employee, who was dismissed due to cessation of business operation, is entitled to the separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. And it is jurisprudential that separation pay should also be paid to employees even if the closure or cessation of operations is not due to losses.[25]

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[24] *Rollo,* pp. 53-54.

[25] *Eastridge Golf Club, Inc. v. Eastridge Golf Club, Inc. Labor Union-Super,* G.R. No. 166760, 22 August 2008, 563 SCRA 93, 106-107; *J.A.T.*

The Court is not impressed with the claim that actual severe financial losses exempt MMC from paying separation benefits to complainants. In the first place, MMC did not appeal the decision of the Court of Appeals which affirmed the NLRC's award of separation pay to complainants. MMC's failure had the effect of making the awards final so that MMC could no longer seek any other affirmative relief. In the second place, the non-issuance of a permit forced MMC to permanently cease its business operations, as confirmed by the Court of Appeals. Under Article 283, the employer can lawfully close shop anytime as long as cessation of or withdrawal from business operations is *bona fide* in character and not impelled by a motive to defeat or circumvent the tenurial rights of employees, and as long as he pays his employees their termination pay in the amount corresponding to their length of service.[26] The cessation of operations, in the case at bar is of such nature. It was proven that MMC stopped its operations precisely due to failure to secure permit to operate a tailings pond. Separation pay must nonetheless be given to the separated employees.

Finding no cogent reason to disturb its ruling, we affirm the Decision of the Court of Appeals.

BASED ON THE FOREGOING, the petition is *DENIED*. The Decision of the Court of Appeals is *AFFIRMED*. No costs.

SO ORDERED.

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

General Services v. National Labor Relations Commission, G.R. No. 148340, 26 January 2004, 421 SCRA 78, 89-90.

[26] *Industrial Timber Corporation v. Ababon*, G.R. No. 164518, 25 January 2006, 480 SCRA 171, 185-186.

THIRD DIVISION

[G.R. No. 178788. September 29, 2010]

UNITED AIRLINES, INC., *petitioner*, *vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent*.

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); TAX ON RESIDENT FOREIGN CORPORATIONS; INTERNATIONAL CARRIER; AN INTERNATIONAL CARRIER THAT HAS CEASED ITS FLIGHT OPERATIONS TO OR FROM THE PHILIPPINES IS NO LONGER TAXABLE UNDER SECTION 28(A)(3)(a) AT THE RATE OF 2 ½% OF ITS GROSS PHILIPPINE BILLINGS (GPB); CARRIERS WHO NO LONGER HAVE FLIGHTS TO OR FROM THE PHILIPPINES BUT NONETHELESS EARN INCOME FROM OTHER ACTIVITIES IN THE COUNTRY SHALL BE TAXED AT THE RATE OF 32% OF SUCH INCOME.— As correctly pointed out by petitioner, inasmuch as it ceased operating passenger flights to or from the Philippines in 1998, it is not taxable under Section 28(A)(3)(a) of the NIRC for gross passenger revenues. This much was also found by the CTA. In *South African Airways v. Commissioner of Internal Revenue*, we ruled that the correct interpretation of the said provisions is that, if an international air carrier maintains flights to and from the Philippines, it shall be taxed at the rate of 2½% of its GPB, while international air carriers that do not have flights to and from the Philippines but nonetheless earn income from other activities in the country will be taxed at the rate of 32% of such income.

2. ID.; ID.; TAX REFUND; PETITIONER UNDERPAID ITS GROSS PHILIPPINE BILLINGS (GPB) TAX FOR 1999 BECAUSE IT MADE DEDUCTIONS FROM ITS GROSS CARGO REVENUES IN THE INCOME TAX RETURN IT FILED FOR THE TAXABLE 1999 AND THE AMOUNT OF UNDERPAYMENT IS EVEN GREATER THAN THE REFUND SOUGHT FOR ERRONEOUSLY PAID GPB TAX REVENUES FOR THE SAME TAXABLE PERIOD.— The

subject of claim for tax refund is the tax paid on passenger revenue for taxable year 1999 at the time when petitioner was still operating cargo flights originating from the Philippines although it had ceased passenger flight operations. The CTA found that petitioner had underpaid its GPB tax for 1999 because petitioner had made deductions from its gross cargo revenues in the income tax return it filed for the taxable year 1999, the amount of underpayment even greater than the refund sought for erroneously paid GPB tax on passenger revenues for the same taxable period. Hence, the CTA ruled petitioner is not entitled to a tax refund.

3. ID.; ID.; ID.; THE COURT OF TAX APPEALS CAN MAKE VALID FINDINGS ON ERRONEOUS DEDUCTIONS MADE BY A TAXPAYER.— Under Section 72 of the NIRC, the CTA can make a valid finding that petitioner made erroneous deductions on its gross cargo revenue; that because of the erroneous deductions, petitioner reported a lower cargo revenue and paid a lower income tax thereon; and that petitioner's underpayment of the income tax on cargo revenue is even higher than the income tax it paid on passenger revenue subject of the claim for refund, such that the refund cannot be granted. x x x In the case at bar, the CTA explained that it merely determined whether petitioner is entitled to a refund based on the facts. On the assumption that petitioner filed a correct return, it had the right to file a claim for refund of GPB tax on passenger revenues it paid in 1999 when it was not operating passenger flights to and from the Philippines. However, upon examination by the CTA, petitioner's return was found erroneous as it understated its gross cargo revenue for the same taxable year due to deductions of two (2) items consisting of commission and other incentives of its agent. Having underpaid the GPB tax due on its cargo revenues for 1999, petitioner is not entitled to a refund of its GPB tax on its passenger revenue, the amount of the former being even much higher (₱31.43 million) than the tax refund sought (₱5.2 million). The CTA therefore correctly denied the claim for tax refund after determining the proper assessment and the tax due. Obviously, the matter of prescription raised by petitioner is a non-issue. The prescriptive periods under Sections 203 and 222 of the NIRC find no application in this case.

4. ID.; ID.; ID.; TAX REFUNDS, LIKE TAX EXEMPTIONS, ARE CONSTRUED STRICTLY AGAINST THE TAXPAYER AND LIBERALLY IN FAVOR OF THE TAXING AUTHORITY.— We must emphasize that tax refunds, like tax exemptions, are construed strictly against the taxpayer and liberally in favor of the taxing authority. In any event, petitioner has not discharged its burden of proof in establishing the factual basis for its claim for a refund and we find no reason to disturb the ruling of the CTA. It has been a long-standing policy and practice of the Court to respect the conclusions of quasi-judicial agencies such as the CTA, a highly specialized body specifically created for the purpose of reviewing tax cases.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.
The Solicitor General and *Clarissa J. Virtudes* for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, of the Decision[1] dated July 5, 2007 of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in C.T.A. EB No. 227 denying petitioner's claim for tax refund of ₱5.03 million.

The undisputed facts are as follows:

Petitioner United Airlines, Inc. is a foreign corporation organized and existing under the laws of the State of Delaware, U.S.A., engaged in the international airline business.

Petitioner used to be an online international carrier of passenger and cargo, *i.e.*, it used to operate passenger and cargo flights originating in the Philippines. Upon cessation of its passenger flights in and out of the Philippines beginning February 21, 1998, petitioner appointed a sales agent in the Philippines —

[1] *Rollo*, pp. 64-77.

Aerotel Ltd. Corp., an independent general sales agent acting as such for several international airline companies.[2] Petitioner continued operating cargo flights from the Philippines until January 31, 2001.[3]

On April 12, 2002, petitioner filed with respondent Commissioner a claim for income tax refund, pursuant to Section 28(A)(3)(a)[4] of the National Internal Revenue Code of 1997 (NIRC) in relation to Article 4(7)[5] of the Convention between the Government of the Republic of the Philippines and the Government of the United States of America with respect to Income Taxes (RP-US Tax Treaty). Petitioner sought to refund the total amount of ₱15,916,680.69 pertaining to income taxes paid on gross passenger and cargo revenues for the taxable years 1999 to 2001, which included the amount of ₱5,028,813.23 allegedly representing income taxes paid in 1999 on passenger revenue from tickets sold in the Philippines, the uplifts of which did not originate in the Philippines. Citing the change in definition

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[2] *Id.* at 48, 78-79.

[3] *Id.* at 80.

[4] SEC. 28. **Rates of Income Tax on Foreign Corporations**.—

(A) *Tax on Resident Foreign Corporations*.—

x x x x x x x x x

(3) *International Carrier.* — An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 ½%) on its "*Gross Philippine Billings*" as defined hereunder:

(a) *International Air Carrier* — "*Gross Philippine Billings*" refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document: xxx.

[5] **Article 4**

Source of Income

For the purpose of this Convention:

x x x x x x x x x

(7) Gross revenues from the operation of ships in international traffic shall be treated as from sources within a Contracting State to the extent they are derived from international traffic originating in that State.

x x x x x x x x x

of Gross Philippine Billings (GPB) in the NIRC, petitioner argued that since it no longer operated passenger flights originating from the Philippines beginning February 21, 1998, its passenger revenue for 1999, 2000 and 2001 cannot be considered as income from sources within the Philippines, and hence should not be subject to Philippine income tax under Article 9[6] of the RP-US Tax Treaty.[7]

As no resolution on its claim for refund had yet been made by the respondent and in view of the two (2)-year prescriptive period (from the time of filing the Final Adjustment Return for the taxable year 1999) which was about to expire on April 15, 2002, petitioner filed on said date a petition for review with the Court of Tax Appeals (CTA).[8]

Petitioner asserted that under the new definition of GPB under the 1997 NIRC and Article 4(7) of the RP-US Tax Treaty,

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[6] **Article 9**

Shipping and Air Transport

1) Notwithstanding any other provision of this Convention, profits derived by a resident of one of the Contracting States from sources within the other Contracting State from the operation of ships in international traffic may be taxed by both Contracting States; however, the tax imposed by the other Contracting State may be as much as, but shall not exceed, the lesser of —

   a) one and one-half percent of the gross revenues derived from sources in that State; and

   b) the lowest rate of Philippine tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.

2) Nothing in the Convention shall affect the right of a Contracting State to tax, in accordance with its domestic laws, profits derived by a resident of the other Contracting State from sources within the first-mentioned Contracting State from the operation of aircraft in international traffic.

3) The provisions of paragraphs 1) and 2) shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.

[7] *Rollo,* pp. 80-84.

[8] *Id.* at 95.

Philippine tax authorities have jurisdiction to tax only the gross revenue derived by US air and shipping carriers from outgoing traffic in the Philippines. Since the Bureau of Internal Revenue (BIR) erroneously imposed and collected income tax in 1999 based on petitioner's gross passenger revenue, as beginning 1998 petitioner no longer flew passenger flights to and from the Philippines, petitioner is entitled to a refund of such erroneously collected income tax in the amount of **₱5,028,813.23**.[9]

In its Decision[10] dated May 18, 2006, the CTA's First Division[11] ruled that no excess or erroneously paid tax may be refunded to petitioner because the income tax on GPB under Section 28(A)(3)(a) of the NIRC applies as well to gross revenue from carriage of cargoes originating from the Philippines. It agreed that petitioner cannot be taxed on its 1999 passenger revenue from flights originating outside the Philippines. However, in reporting a cargo revenue of ₱740.33 million in 1999, it was found that petitioner deducted two (2) items from its gross cargo revenue of ₱2.84 billion: ₱141.79 million as commission and ₱1.98 billion as other incentives of its agent. These deductions were erroneous because the gross revenue referred to in Section 28(A)(3)(a) of the NIRC was total revenue before any deduction of commission and incentives. Petitioner's gross cargo revenue in 1999, being ₱2.84 billion, the GPB tax thereon was ₱42.54 million and not ₱11.1 million, the amount petitioner paid for the reported net cargo revenue of ₱740.33 million. The CTA First Division further noted that petitioner even underpaid its taxes on cargo revenue by ₱31.43 million, which amount was much higher than the ₱5.03 million it asked to be refunded.

A motion for reconsideration was filed by petitioner but the First Division denied the same. It held that petitioner's claim for tax refund was not offset with its tax liability; that petitioner's

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[9] *Id.* at 90-95.

[10] *Id.* at 47-60.

[11] Composed of Presiding Justice Ernesto D. Acosta as Chairman, and Associate Justices Lovell R. Bautista and Caesar A. Casanova as Members.

tax deficiency was due to erroneous deductions from its gross cargo revenue; that it did not make an assessment against petitioner; and that it merely determined if petitioner was entitled to a refund based on the undisputed facts and whether petitioner had paid the correct amount of tax.[12]

Petitioner elevated the case to the CTA *En Banc* which affirmed the decision of the First Division.

Hence, this petition anchored on the following grounds:

I. THE CTA *EN BANC* GROSSLY ERRED IN DENYING THE PETITIONER'S CLAIM FOR REFUND OF ERRONEOUSLY PAID INCOME TAX ON GROSS PHILIPPINE BILLINGS [GPB] BASED ON ITS FINDING THAT PETITIONER'S UNDERPAYMENT OF [₱31.43 MILLION] GPB TAX ON CARGO REVENUES IS A LOT HIGHER THAN THE GPB TAX OF [₱5.03 MILLION] ON PASSENGER REVENUES, WHICH IS THE SUBJECT OF THE INSTANT CLAIM FOR REFUND. THE DENIAL OF PETITIONER'S CLAIM ON SUCH GROUND CLEARLY AMOUNTS TO AN OFF-SETTING OF TAX LIABILITIES, CONTRARY TO WELL-SETTLED JURISPRUDENCE.

II. THE DECISION OF THE CTA *EN BANC* VIOLATED PETITIONER'S RIGHT TO DUE PROCESS.

III. THE CTA *EN BANC* ACTED IN EXCESS OF ITS JURISDICTION BY DENYING PETITIONER'S CLAIM FOR REFUND OF ERRONEOUSLY PAID INCOME TAX ON GROSS PHILIPPINE BILLINGS BASED ON ITS FINDING THAT PETITIONER UNDERPAID GPB TAX ON CARGO REVENUES IN THE AMOUNT OF [₱31.43 MILLION] FOR THE TAXABLE YEAR 1999.

IV. THE CTA *EN BANC* HAS NO AUTHORITY UNDER THE LAW TO MAKE ANY ASSESSMENTS FOR DEFICIENCY TAXES. THE AUTHORITY TO MAKE ASSESSMENTS FOR DEFICIENCY NATIONAL INTERNAL REVENUE TAXES IS VESTED BY THE 1997 NIRC UPON RESPONDENT.

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[12] *Rollo*, pp. 61-63.

V. ANY ASSESSMENT AGAINST PETITIONER FOR DEFICIENCY INCOME TAX FOR THE TAXABLE YEAR 1999 IS ALREADY BARRED BY PRESCRIPTION.[13]

The main issue to be resolved is whether the petitioner is entitled to a refund of the amount of **₱5,028,813.23** it paid as income tax on its passenger revenues in 1999.

Petitioner argues that its claim for refund of erroneously paid GPB tax on off-line passenger revenues cannot be denied based on the finding of the CTA that petitioner allegedly underpaid the GPB tax on cargo revenues by ₱31,431,171.09, which underpayment is allegedly higher than the GPB tax of ₱5,028,813.23 on passenger revenues, the amount of the instant claim. The denial of petitioner's claim for refund on such ground is tantamount to an offsetting of petitioner's claim for refund of erroneously paid GPB against its alleged *tax liability*. Petitioner thus cites the well-entrenched rule in taxation cases that internal revenue taxes cannot be the subject of set-off or compensation.[14]

According to petitioner, the offsetting of the liabilities is very clear in the instant case because the amount of petitioner's claim for refund of erroneously paid GPB tax of ₱5,028,813.23 for the taxable year 1999 is being offset against petitioner's alleged deficiency GPB tax liability on *cargo revenues* for the same year, which was not even the subject of an investigation nor any valid assessment issued by respondent against the petitioner. Under Section 228[15] of the NIRC, the "taxpayer

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

[14] *Id.* at 33-36.

[15] SEC. 228. **Protesting of Assessment**. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

x x x x x x x x x

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

x x x x x x x x x

shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void." This administrative process of issuing an assessment is part of procedural due process enshrined in the 1987 Constitution. Records do not show that petitioner has been assessed by the BIR for any deficiency GBP tax for 1999, nor was there any finding or investigation being conducted by respondent of any liability of petitioner for GPB tax for the said taxable period. Clearly, petitioner's right to due process was violated.[16]

Petitioner further argues that the CTA acted in excess of its jurisdiction because the exclusive appellate jurisdiction of the CTA covers only decisions or inactions of the respondent in cases involving disputed assessments. The CTA has effectively assessed petitioner with a ₱31.43 million tax deficiency when it concluded that petitioner underpaid its GPB tax on cargo revenue. Since respondent did not issue an assessment for any deficiency tax, the alleged deficiency tax on its cargo revenue in 1999 cannot be considered a disputed assessment that may be passed upon by the CTA. Petitioner stresses that the authority to issue an assessment for deficiency internal revenue taxes is vested by law on respondent, not with the CTA.[17]

Lastly, petitioner argues that any assessment against it for deficiency income tax for taxable year 1999 is barred by prescription. Petitioner claims that the prescriptive period within which an assessment for deficiency income tax may be made has prescribed on April 17, 2003, three (3) years after it filed its 1999 tax return.[18]

Respondent Commissioner maintains that the CTA acted within its jurisdiction in denying petitioner's claim for tax refund. It points out that the objective of the CTA's determination of whether petitioner correctly paid its GPB tax for the taxable year 1999 was to ascertain the latter's entitlement to the claimed

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[16] *Rollo,* pp. 34, 36-39.

[17] *Id.* at 39-40.

[18] *Id.* at 42-43.

refund and not for the purpose of imposing any deficiency tax. Hence, petitioner's arguments regarding the propriety of the CTA's determination of its deficiency tax on its GPB for gross cargo revenues for 1999 are clearly misplaced.[19]

The petition has no merit.

As correctly pointed out by petitioner, inasmuch as it ceased operating passenger flights to or from the Philippines in 1998, it is not taxable under Section 28(A)(3)(a) of the NIRC for gross passenger revenues. This much was also found by the CTA. In *South African Airways v. Commissioner of Internal Revenue*,[20] we ruled that the correct interpretation of the said provisions is that, if an international air carrier maintains flights to and from the Philippines, it shall be taxed at the rate of 2½% of its GPB, while international air carriers that do not have flights to and from the Philippines but nonetheless earn income from other activities in the country will be taxed at the rate of 32% of such income.

Here, the subject of claim for tax refund is the tax paid on passenger revenue for taxable year 1999 at the time when petitioner was still operating cargo flights originating from the Philippines although it had ceased passenger flight operations. The CTA found that petitioner had underpaid its GPB tax for 1999 because petitioner had made deductions from its gross cargo revenues in the income tax return it filed for the taxable year 1999, the amount of underpayment even greater than the refund sought for erroneously paid GPB tax on passenger revenues for the same taxable period. Hence, the CTA ruled petitioner is not entitled to a tax refund.

Petitioner's arguments regarding the propriety of such determination by the CTA are misplaced.

Under Section 72 of the NIRC, the CTA can make a valid finding that petitioner made erroneous deductions on its gross cargo revenue; that because of the erroneous deductions, petitioner

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[19] *Id.* at 199.

[20] G.R. No. 180356, February 16, 2010, pp. 9-10.

reported a lower cargo revenue and paid a lower income tax thereon; and that petitioner's underpayment of the income tax on cargo revenue is even higher than the income tax it paid on passenger revenue subject of the claim for refund, such that the refund cannot be granted.

Section 72 of the NIRC reads:

> SEC. 72. **Suit to Recover Tax Based on False or Fraudulent Returns**. — When an assessment is made in case of any list, statement or return, which in the opinion of the Commissioner was false or fraudulent or contained any understatement or undervaluation, no tax collected under such assessment shall be recovered by any suit, unless it is proved that the said list, statement or return was not false nor fraudulent and did not contain any understatement or undervaluation; but this provision shall not apply to statements or returns made or to be made in good faith regarding annual depreciation of oil or gas wells and mines.

In the afore-cited case of *South African Airways*, this Court rejected similar arguments on the denial of claim for tax refund, as follows:

> **Precisely, petitioner questions the offsetting of its payment of the tax under Sec. 28(A)(3)(a) with their liability under Sec. 28(A)(1), considering that there has not yet been any assessment of their obligation under the latter provision**. Petitioner argues that such offsetting is in the nature of legal compensation, which cannot be applied under the circumstances present in this case.
>
> Article 1279 of the Civil Code contains the elements of legal compensation, to wit:
>
> > Art. 1279. In order that compensation may be proper, it is necessary:
> >
> > (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
> >
> > (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
> >
> > (3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

And we ruled in *Philex Mining Corporation v. Commissioner of Internal Revenue*, thus:

> In several instances prior to the instant case, we have already made the pronouncement that taxes cannot be subject to compensation for the simple reason that the government and the taxpayer are not creditors and debtors of each other. There is a material distinction between a tax and debt. Debts are due to the Government in its corporate capacity, while taxes are due to the Government in its sovereign capacity. We find no cogent reason to deviate from the aforementioned distinction.

Prescinding from this premise, in *Francia v. Intermediate Appellate Court*, we categorically held that taxes cannot be subject to set-off or compensation, thus:

> We have consistently ruled that there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of a tax cannot await the results of a lawsuit against the government.

The ruling in *Francia* has been applied to the subsequent case of *Caltex Philippines, Inc. v. Commission on Audit*, which reiterated that:

> . . . a taxpayer may not offset taxes due from the claims that he may have against the government. Taxes cannot be the subject of compensation because the government and taxpayer are not mutually creditors and debtors of each other and a claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off.

Verily, petitioner's argument is correct that the offsetting of its tax refund with its alleged tax deficiency is unavailing under Art. 1279 of the Civil Code.

***Commissioner of Internal Revenue v. Court of Tax Appeals*, however, granted the offsetting of a tax refund with a tax deficiency** in this wise:

> Further, it is also worth noting that the Court of Tax Appeals erred in denying petitioner's supplemental motion for reconsideration alleging bringing to said court's attention the existence of the deficiency income and business tax assessment against Citytrust. The fact of such deficiency assessment is intimately related to and inextricably intertwined with the right of respondent bank to claim for a tax refund for the same year. To award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects. Herein private respondent cannot be entitled to refund and at the same time be liable for a tax deficiency assessment for the same year.
>
> **The grant of a refund is founded on the assumption that the tax return is valid, that is, the facts stated therein are true and correct. The deficiency assessment, although not yet final, created a doubt as to and constitutes a challenge against the truth and accuracy of the facts stated in said return which, by itself and without unquestionable evidence, cannot be the basis for the grant of the refund.**
>
> **Section 82, Chapter IX of the National Internal Revenue Code of 1977,** which was the applicable law when the claim of Citytrust was filed, provides that "(w)hen an assessment is made in case of any list, statement, or return, which in the opinion of the Commissioner of Internal Revenue was false or fraudulent or contained any understatement or undervaluation, no tax collected under such assessment shall be recovered by any suits unless it is proved that the said list, statement, or return was not false nor fraudulent and did not contain any understatement or undervaluation; but this provision shall not apply to statements or returns made or to be made in good faith regarding annual depreciation of oil or gas wells and mines."
>
> Moreover, **to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits.** If the deficiency assessment should subsequently be upheld, the Government will be forced to institute anew a proceeding for

> the recovery of erroneously refunded taxes which recourse must be filed within the prescriptive period of ten years after discovery of the falsity, fraud or omission in the false or fraudulent return involved. This would necessarily require and entail additional efforts and expenses on the part of the Government, impose a burden on and a drain of government funds, and impede or delay the collection of much-needed revenue for governmental operations.
>
> **Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable.**
>
> In fact, as the Court of Tax Appeals itself has heretofore conceded, it would be only just and fair that the taxpayer and the Government alike be given equal opportunities to avail of remedies under the law to defeat each other's claim and to determine all matters of dispute between them in one single case. It is important to note that in determining whether or not petitioner is entitled to the refund of the amount paid, it would [be] necessary to determine how much the Government is entitled to collect as taxes. This would necessarily include the determination of the correct liability of the taxpayer and, certainly, a determination of this case would constitute *res judicata* on both parties as to all the matters subject thereof or necessarily involved therein. (Emphasis supplied.)

Sec. 82, Chapter IX of the 1977 Tax Code is now Sec. 72, Chapter XI of the 1997 NIRC. The above pronouncements are, therefore, still applicable today.

Here, **petitioner's similar tax refund claim assumes that the tax return that it filed was correct. Given, however, the finding of the CTA that petitioner, although not liable under Sec. 28(A)(3)(a) of the 1997 NIRC, is liable under Sec. 28(A)(1), the correctness of the return filed by petitioner is now put in doubt. As such, we cannot grant the prayer for a refund.**[21] (Additional emphasis supplied.)

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[21] *Id.* at 10-13. Citations omitted.

In the case at bar, the CTA explained that it merely determined whether petitioner is entitled to a refund based on the facts. On the assumption that petitioner filed a correct return, it had the right to file a claim for refund of GPB tax on passenger revenues it paid in 1999 when it was not operating passenger flights to and from the Philippines. However, upon examination by the CTA, petitioner's return was found erroneous as it understated its gross cargo revenue for the same taxable year due to deductions of two (2) items consisting of commission and other incentives of its agent. Having underpaid the GPB tax due on its cargo revenues for 1999, petitioner is not entitled to a refund of its GPB tax on its passenger revenue, the amount of the former being even much higher (₱31.43 million) than the tax refund sought (₱5.2 million). The CTA therefore correctly denied the claim for tax refund after determining the proper assessment and the tax due. Obviously, the matter of prescription raised by petitioner is a non-issue. The prescriptive periods under Sections 203[22] and 222[23] of the NIRC find no application in this case.

We must emphasize that tax refunds, like tax exemptions, are construed strictly against the taxpayer and liberally in favor

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[22] SEC. 203. **Period of Limitation Upon Assessment and Collection**. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

[23] SEC. 222. **Exceptions as to Period of Limitation of Assessment and Collection of Taxes**. —

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud, or omission: xxx.

of the taxing authority.[24] In any event, petitioner has not discharged its burden of proof in establishing the factual basis for its claim for a refund and we find no reason to disturb the ruling of the CTA. It has been a long-standing policy and practice of the Court to respect the conclusions of quasi-judicial agencies such as the CTA, a highly specialized body specifically created for the purpose of reviewing tax cases.[25]

WHEREFORE, we *DENY* the petition for lack of merit and *AFFIRM* the Decision dated July 5, 2007 of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 227.

With costs against the petitioner.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 181844. September 29, 2010]

SPS. FELIPE and JOSEFA PARINGIT, *petitioners, vs.* **MARCIANA PARINGIT BAJIT, ADOLIO PARINGIT and ROSARIO PARINGIT ORDOÑO,** *respondents.*

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[24] *Far East Bank and Trust Company v. Court of Appeals*, G.R. No. 129130, December 9, 2005, 477 SCRA 49, 57, citing *Paseo Realty & Development Corporation v. Court of Appeals*, G.R. No. 119286, October 13, 2004, 440 SCRA 235.

[25] *Commissioner of Internal Revenue v. General Food (Phils.), Inc.*, G.R. No. 143672, April 24, 2003, 401 SCRA 545, 553.

SYLLABUS

1. CIVIL LAW; TRUST; IMPLIED TRUST; CIRCUMSTANCES OF PRESENT CASE ARE ACTUALLY WHAT IMPLIED TRUST IS ALL ABOUT.— The circumstances of this case are actually what implied trust is about. Although no express agreement covered Felipe and his wife's purchase of the lot for the siblings and their father, it came about by operation of law and is protected by it. The nature of the transaction established the implied trust and this in turn gave rise to the rights and obligations provided by law. Implied trust is a rule of equity, independent of the particular intention of the parties. Here, the evidence shows that Felipe and his wife bought the lot for the benefit of Julian and his children, rather than for themselves.

2. ID.; ID.; ID.; AN IMPLIED TRUST PRESCRIBES WITHIN 10 YEARS FROM THE TIME THE RIGHT OF ACTION ACCRUES; PRESENT ACTION WAS FILED WITHIN THE PERIOD PROVIDED BY LAW.— Felipe and his wife also claim that Marciana, *et al.*'s action to recover their portions of the house and lot had already prescribed. True, an implied trust prescribes within 10 years from the time the right of action accrues. But when did the right of action based on the implied trust accrue in this case? A right of action implies the existence of a cause of action and a cause of action has three elements: a) the existence of a right in plaintiff's favor; b) defendant's obligation to respect such right; and c) defendant's act or omission that violates the plaintiff's right. Only when the last element occurs or takes place can it be said in law that a cause of action has arisen. In an implied trust, the beneficiary's cause of action arises when the trustee repudiates the trust, not when the trust was created as Felipe and his wife would have it. The spouses of course registered the lot in their names in January 1987 but they could not be said to have repudiated the implied trust by that registration. Their purchase of the land and registration of its title in their names are not incompatible with implied trust. It was understood that they did this for the benefit of Julian and all the children. At any rate, even assuming that Felipe and his wife's registration of the lot in their names in January 1987 constituted a hostile act or a violation of the implied trust, Marciana, *et al.* had 10 years or until January of 1997 within which to bring their action.

Here, they filed such action in July 1996 well within the period allowed them.

3. ID.; GENERAL PRINCIPLES OF LAW; LACHES; APPLICABLE IN CASE AT BAR.— Felipe and his wife also claim that Marciana, *et al.*'s action was barred by laches. But there is no basis for such claim. Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence could or should have been done earlier. Here, Marciana, *et al.* had no reason to file an earlier suit against Felipe and his wife since the latter had not bothered them despite their purchase of the lot in their names on January 30, 1984. Only about 12 years later or on December 18, 1995 when they wrote their demand letter did the spouses take an adverse attitude against Marciana, *et al.* The latter filed their action to annul Felipe and his wife's title and have the same transferred to their names not too long later on July 24, 1996.

APPEARANCES OF COUNSEL

Albino B. Achas for petitioners.
Romeo N. Bartolome for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the existence of an implied trust in a transaction where a property was bought by one sibling supposedly for the benefit of all. The other siblings now want to recover their share in the property by reimbursing their brother for their share in the purchase price.

The Facts and the Case

During their lifetime, spouses Julian and Aurelia Paringit leased a lot on Norma Street, Sampaloc, Manila (the lot) from Terocel Realty, Inc. (Terocel Realty).[1] They built their home there and

[1] TSN, March 7, 1997, p. 7.

raised five children, namely, Florencio, Felipe, Marciana, Adolio, and Rosario.[2] Aurelia died on November 6, 1972.[3]

For having occupied the lot for years, Terocel Realty offered to sell it to Julian but he did not have enough money at that time to meet the payment deadline. Julian sought the help of his children so he can buy the property but only his son Felipe and wife Josefa had the financial resources he needed at that time.[4] To bring about the purchase, on January 16, 1984 Julian executed a deed of assignment of leasehold right in favor of Felipe and his wife that would enable them to acquire the lot.[5] On January 30, 1984 the latter bought the same from Terocel Realty for ₱55,500.00 to be paid in installments.[6] On April 12, 1984 Felipe and his wife paid the last installment and the realty company executed a Deed of Absolute Sale in their favor and turned over the title to them.[7]

On February 25, 1985, due to issues among Julian's children regarding the ownership of the lot, Julian executed an affidavit clarifying the nature of Felipe and his wife's purchase of the lot. He claimed that it was bought for the benefit of all his children.[8] He said in his affidavit:

3. That recently, the Terocel Realty, Inc., owners of the subdivision lots in Sampaloc, gave a limited period to actual occupants like us within which to purchase the lands occupied and as I had no funds at that time, I asked all my children and their respective spouses to contribute money with which to purchase the lot and thereafter to divide the lot among themselves but only my son Felipe Paringit and his wife Josefa answered my plea and so, in order that they could purchase the

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[2] Records, p. 1.

[3] *Id.* at 7.

[4] TSN, March 7, 1997, p. 8.

[5] Records, p. 8.

[6] Deed of Sale, *id.* at 9.

[7] TSN, January 11, 2001, p. 14; records, p. 280.

[8] TSN, March 7, 1997, p. 12.

land, I assigned to my son and his wife my right to the whole property and with this assignment, the couple purchased the parcel of land from the Terocel Realty, Inc. for the sum of Fifty Five Thousand Five Hundred Pesos (₱55,500.00) Philippine currency on April 12, 1984 as shown in the Deed of Absolute sale executed by the Terocel Realty, Inc. bearing Registry No. 273, Page 56, Book XV, Series of 1984, of Notary Public of Manila, Atty. Albino B. Achas plus the sum of ₱4,500.00 expenses or a total of Sixty Thousand (₱60,000.00);

x x x x x x x x x

5. That to set the records straight, and to effect peace and understanding among my children and their respective families, I, as father and head of the family, hereby declare:

x x x x x x x x x

c) That my conjugal share in the above described property is one half or 75 sq. m. and the other half or 75 sq. m. belongs to my deceased wife;

d) That I waive my share in the estate of my deceased wife and as she has no will regarding the said estate, the same must be divided equally among my five children at 15 sq. m. each; but each of them should reimburse their brother Felipe and his wife, Josefa the proportional amount advanced by them as I also will reimburse him the sum of ₱30,000.00 or one half of the amount that the couple advanced.

e) That if any of my children claims or needs a bigger area than 15 sq. m., he/she should amicably talk with or negotiate with any other brother or sister for transfer or assignment of such area as they agree.[9]

Expressing their concurrence with what their father said in his affidavit, Felipe's siblings, namely, Marciana, Rosario, and Adolio (collectively, Marciana, *et al.*) signed the same. Josefa, Felipe's wife, also signed the affidavit for Felipe who was in Saudi Arabia.[10] Only Florencio, among the siblings, did not sign.

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[9] Records, pp. 12-13.

[10] TSN, September 30, 1997, p. 21; TSN, November 11, 1997, pp. 7-8; records p. 14.

On January 23, 1987 Felipe and his wife registered their purchase of the lot,[11] resulting in the issuance of Transfer Certificate of Title 172313 in their names.[12] Despite the title, however, the spouses moved to another house on the same street in 1988.[13] Marciana, *et al.*, on the other hand, continued to occupy the lot with their families without paying rent.[14] This was the situation when their father Julian died on December 21, 1994.

On December 18, 1995 Felipe and his wife sent a demand letter to Marciana, *et al.* asking them to pay rental arrearages for occupying the property from March 1990 to December 1995 at the rate of ₱2,400.00 a month, totaling ₱168,000.00.[15] Marciana, *et al.* refused to pay or reply to the letter, believing that they had the right to occupy the house and lot, it being their inheritance from their parents. On March 11, 1996 Felipe and his wife filed an ejectment suit against them.[16] The suit prospered, resulting in the ejectment of Marciana, *et al.* and their families from the property.[17] Shortly after, Felipe and his wife moved into the same.[18]

To vindicate what they regarded as their right to the lot and the house, on July 24, 1996 Marciana, *et al.* filed the present action against Felipe and his wife for annulment of title and reconveyance of property before the Regional Trial Court (RTC) of Manila, Branch 39.[19]

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[11] TSN, January 11, 2001, p. 15.

[12] Records, p. 10.

[13] TSN, April 25, 1997, p. 3.

[14] *Id.* at 13.

[15] Records, p. 291.

[16] TSN, September 12, 1997 p. 16; TSN, September 30, 1997, p. 21.

[17] TSN, November 11, 1997, p. 10; TSN, March 7, 1997, p. 5.

[18] TSN, April 25, 1997, p. 3.

[19] Records, p. 1.

In his answer, Felipe denied knowledge of the agreement among the siblings that the property would devolve to them all.[20] Josefa, his wife, claimed that she signed the affidavit only because Marciana, *et al.* were going to get mad at her had she refused.[21] She also claimed that she signed the document only to prove having received it.[22]

For their part, Marciana, *et al.* insisted that the agreement was that Felipe and his wife would acquire the lot for the benefit of all the siblings. They even tried to reimburse the spouses for their shares in the lot's price.[23] In fact, Adolio offered to pay ₱32,000.00 for his 30 square meter-portion of the lot but Felipe and his wife did not accept it. The other siblings tried to pay for their shares of the purchase price, too, but the spouses already avoided them.[24] Marciana, *et al.* denied pressuring Josefa into signing the document in question. They claimed that it was in fact Josefa who caused the drafting of the affidavit.[25]

On July 21, 2004 the RTC rendered a decision, finding the evidence of Marciana, *et al.* insufficient to prove by preponderance of evidence that Felipe and his wife bought the subject lot for all of the siblings. Not satisfied with that decision, Marciana, *et al.* appealed to the Court of Appeals (CA).

On August 29, 2007 the CA rendered judgment[26] reversing the decision of the RTC and ordering Felipe and his wife to reconvey to Marciana, *et al.* their proportionate share in the lot upon reimbursement of what the spouses paid to acquire it plus legal interest. Felipe and his wife filed a motion for reconsideration

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[20] TSN, February 17, 2003, pp. 10-11; TSN, November 27, 2003 pp. 5-6.

[21] TSN, July 14, 2003, p. 6.

[22] TSN, September 22, 2003, p. 6.

[23] TSN, April 25, 1997, p. 14.

[24] TSN, November 12, 1999, pp. 15-22.

[25] TSN, November 27, 2003, pp. 4-5.

[26] *Rollo*, pp. 16-26.

of the decision but the CA denied it on February 21, 2008,[27] prompting them to come to this Court on a petition for review.

The Issues Presented

This case presents the following issues:

1. Whether or not the CA erred in finding that Felipe and his wife purchased the subject lot under an implied trust for the benefit of all the children of Julian; and

2. Whether or not the CA erred in failing to hold that Marciana, *et al.*'s right of action was barred by prescription or laches.

The Court's Rulings

The CA found that Felipe and his wife's purchase of the lot falls under the rubric of the implied trust provided in Article 1450 of the Civil Code.[28] Implied trust under Article 1450 presupposes a situation where a person, using his own funds, buys property on behalf of another, who in the meantime may not have the funds to purchase it. Title to the property is for the time being placed in the name of the trustee, the person who pays for it, until he is reimbursed by the beneficiary, the person for whom the trustee bought the land. It is only after the beneficiary reimburses the trustee of the purchase price that the former can compel conveyance of the property from the latter.[29]

Felipe and his wife claim 1) that they did not lend money to Marciana, *et al.* for the purchase of the lot; 2) that they did not buy it for the benefit of the siblings; and 3) that the conveyance

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[27] *Id.* at 28.

[28] If the price of a sale of property is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, a trust arises by operation of law in favor of the person whom the money is loaned or for whom it is paid. The latter may redeem the property and compel a conveyance thereof to him.

[29] *Nakpil v. Intermediate Appellate Court*, G.R. No. 74449, August 20, 1993, 225 SCRA 456, 464.

of the lot was not to secure the payment of any supposed loan. Felipe and his wife insist that they had no agreement with Marciana, *et al.* regarding the spouses' purchase of the lot for the benefit of all of Julian's children.

But the circumstances of this case are actually what implied trust is about. Although no express agreement covered Felipe and his wife's purchase of the lot for the siblings and their father, it came about by operation of law and is protected by it. The nature of the transaction established the implied trust and this in turn gave rise to the rights and obligations provided by law. Implied trust is a rule of equity, independent of the particular intention of the parties.[30]

Here, the evidence shows that Felipe and his wife bought the lot for the benefit of Julian and his children, rather than for themselves. Thus:

First. There is no question that the house originally belonged to Julian and Aurelia who built it. When Aurelia died, Julian and his children inherited her conjugal share of the house. When Terocel Realty, therefore, granted its long time tenants on Norma Street the right to acquire the lots on which their house stood, that right technically belonged to Julian and all his children. If Julian really intended to sell the entire house and assign the right to acquire the lot to Felipe and his wife, he would have arranged for Felipe's other siblings to give their conformity as co-owners to such sale. And if Felipe and his wife intended to buy the lot for themselves, they would have, knowing that Felipe's siblings co-owned the same, taken steps to secure their conformity to the purchase. These did not happen.

Second. Julian said in his affidavit that Felipe and his wife bought the lot from Terocel Realty on his behalf and on behalf of his other children. Felipe and his wife advanced the payment because Julian and his other children did not then have the money needed to meet the realty company's deadline for the purchase. Julian added that his other children were to reimburse Felipe for the money he advanced for them.

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[30] *Id.*

Notably, Felipe, acting through his wife, countersigned Julian's affidavit the way his siblings did. The document expressly acknowledged the parties' intention to establish an implied trust between Felipe and his wife, as trustees, and Julian and the other children as trustors. Josefa, Felipe's wife, of course claims that she signed the document only to show that she received a copy of it. But her signature did not indicate that fact. She signed the document in the manner of the others.

Third. If Felipe and his wife really believed that the assignment of the house and the right to buy the lot were what their transactions with Julian were and if the spouses also believed that they became absolute owners of the same when they paid for the lot and had the title to it transferred in their name in 1987, then their moving out of the house in 1988 and letting Marciana, *et al.* continue to occupy the house did not make sense. They would make sense only if, as Marciana, *et al.* and their deceased father claimed, Felipe and his wife actually acquired the lot only in trust for Julian and all the children.

Fourth. Felipe and his wife demanded rent from Marciana, *et al.* only on December 18, 1995, a year following Julian's death on December 21, 1994. This shows that from 1984 when they bought the lot to December 18, 1995, when they made their demand on the occupants to leave, or for over 10 years, Felipe and his wife respected the right of the siblings to reside on the property. This is incompatible with their claim that they bought the house and lot for themselves back in 1984. Until they filed the suit, they did nothing to assert their supposed ownership of the house and lot.

Felipe and his wife also claim that Marciana, *et al.*'s action to recover their portions of the house and lot had already prescribed. True, an implied trust prescribes within 10 years from the time the right of action accrues.[31] But when did the right of action based on the implied trust accrue in this case? A right of action implies the existence of a cause of action and a cause of action has three elements: a) the existence of a right

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[31] CIVIL CODE, Art. 1144.

in plaintiff's favor; b) defendant's obligation to respect such right; and c) defendant's act or omission that violates the plaintiff's right. Only when the last element occurs or takes place can it be said in law that a cause of action has arisen.[32]

In an implied trust, the beneficiary's cause of action arises when the trustee repudiates the trust, not when the trust was created as Felipe and his wife would have it.[33] The spouses of course registered the lot in their names in January 1987 but they could not be said to have repudiated the implied trust by that registration. Their purchase of the land and registration of its title in their names are not incompatible with implied trust. It was understood that they did this for the benefit of Julian and all the children.

At any rate, even assuming that Felipe and his wife's registration of the lot in their names in January 1987 constituted a hostile act or a violation of the implied trust, Marciana, *et al.* had 10 years or until January of 1997 within which to bring their action. Here, they filed such action in July 1996 well within the period allowed them.

Felipe and his wife also claim that Marciana, *et al.*'s action was barred by laches. But there is no basis for such claim. Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence could or should have been done earlier.[34]

Here, Marciana, *et al.* had no reason to file an earlier suit against Felipe and his wife since the latter had not bothered them despite their purchase of the lot in their names on January 30, 1984. Only about 12 years later or on December 18, 1995 when they wrote their demand letter did the spouses take an

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[32] *Español v. The Chairman & Members of the Board of Administrators, Philippine Veterans Administration*, 221 Phil. 667, 670 (1985).

[33] *Nakpil v. Intermediate Appellate Court*, *supra* note 29, at 465-466.

[34] *Heirs of Anacleto B. Nieto v. Municipality of Meycauayan, Bulacan*, G.R. No. 150654, December 13, 2007, 540 SCRA 100, 106.

adverse attitude against Marciana, *et al*. The latter filed their action to annul Felipe and his wife's title and have the same transferred to their names not too long later on July 24, 1996.

Finally, the CA ordered Marciana, *et al*. to reimburse Felipe and his wife the individual siblings' proportionate share in the ₱55,500.00 that the spouses paid the realty company. But, according to Julian's affidavit, concurred in by Felipe, his wife, and Marciana, *et al.*, the total acquisition cost of the lot was ₱60,000.00 (purchase price of ₱55,500.00 plus additional expenses of ₱4,500.00). Thus, respondents should reimburse petitioners their proportionate contribution in the total acquisition cost of ₱60,000.00.

WHEREFORE, the Court *DENIES* the petition, and *AFFIRMS* the decision of the Court of Appeals in CA-G.R. CV 84792 with the *MODIFICATION* that respondents Marciana Paringit Bajit, Adolio Paringit, and Rosario Paringit Ordoño reimburse petitioners Felipe and Josefa Paringit of their corresponding share in the purchase price plus expenses advanced by petitioners amounting to **₱60,000.00** with legal interest from April 12, 1984 until fully paid.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Mendoza, JJ.*, concur.

FIRST DIVISION

[G.R. No. 182729. September 29, 2010]

KUKAN INTERNATIONAL CORPORATION, *petitioner, vs.* **HON. AMOR REYES, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 21, and ROMEO M. MORALES, doing business under the name and style "RM Morales Trophies and Plaques,"** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF JUDGMENTS; THE DECIDING COURT HAS SUPERVISORY CONTROL OVER THE EXECUTION OF ITS JUDGMENT.— In *Carpio v. Doroja*, the Court ruled that the deciding court has supervisory control over the execution of its judgment: A case in which an execution has been issued is regarded as still pending so that all proceedings on the execution are proceedings in the suit. There is no question that the court which rendered the judgment has a general supervisory control over its process of execution, and this power carries with it the right to determine every question of fact and law which may be involved in the execution. We reiterated the above holding in *Javier v. Court of Appeals* in this wise: "The said branch has a general supervisory control over its processes in the execution of its judgment with a right to determine every question of fact and law which may be involved in the execution."

2. ID.; ID.; ID.; ID.; THE SUPERVISORY CONTROL OF THE DECIDING COURT DOES NOT INCLUDE THE ALTERATION OR AMENDMENT OF A FINAL AND EXECUTORY DECISION SAVE FOR CERTAIN RECOGNIZED EXCEPTIONS, LIKE THE CORRECTION OF CLERICAL ERRORS.— The court's supervisory control does not, however, extend as to authorize the alteration or amendment of a final and executory decision, save for certain recognized exceptions, among which is the correction of clerical errors. Else, the court violates the principle of finality of judgment and its immutability, concepts which the Court, in *Tan v. Timbal*, defined: As we held in *Industrial Management International Development Corporation vs. NLRC*: It is an elementary principle of procedure that the resolution of the court in a given issue as embodied in the dispositive part of a decision or order is the controlling factor as to settlement of rights of the parties. **Once a decision or order becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend it. It thereby becomes immutable and unalterable and any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that**

purpose. An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity. *Republic v. Tango* expounded on the same principle and its exceptions: Deeply ingrained in our jurisprudence is the principle that **a decision that has acquired finality becomes immutable and unalterable.** As such, **it may no longer be modified** in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. x x x The doctrine of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final on some definite date fixed by law. **The only exceptions** to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable. None of the exceptions obtains here to merit the review sought.

3. ID.; ID.; ID.; ID.; THE WRIT OF EXECUTION MUST CONFORM TO THE *FALLO* OF THE JUDGMENT AND A WRIT BEYOND THE TERMS OF THE JUDGMENT IS A NULLITY.— As may be noted, the decision, in unequivocal terms, directed Kukan, Inc. to pay the aforementioned awards to Morales. Thus, making KIC, thru the medium of a writ of execution, answerable for the above judgment liability is a clear case of altering a decision, an instance of granting relief not contemplated in the decision sought to be executed. And the change does not fall under any of the recognized exceptions to the doctrine of finality and immutability of judgment. It is a settled rule that a writ of execution must conform to the *fallo* of the judgment; as an inevitable corollary, a writ beyond the terms of the judgment is a nullity.

4. ID.; ID.; SUMMONS; VOLUNTARY APPEARANCE; A MODE OF ACQUIRING JURISDICTION OVER A PARTY-DEFENDANT.— We cannot give imprimatur to the appellate court's appreciation of the thrust of Sec. 20, Rule 14 of the Rules in concluding that the trial court acquired jurisdiction over KIC. *Orion Security Corporation v. Kalfam Enterprises, Inc.* explains how courts acquire jurisdiction over the parties

in a civil case: Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint. **On the other hand, jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them or through their voluntary appearance in court and their submission to its authority.** In the fairly recent *Palma v. Galvez*, the Court reiterated its holding in *Orion Security Corporation*, stating: "[I]n civil cases, the trial court acquires jurisdiction over the person of the defendant either by the service of summons or by the latter's voluntary appearance and submission to the authority of the former." The court's jurisdiction over a party-defendant resulting from his voluntary submission to its authority is provided under Sec. 20, Rule 14 of the Rules, which states: Section 20. *Voluntary appearance*. — The defendant's voluntary appearance in the actions shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. To be sure, the CA's ruling that any form of appearance by the party or its counsel is deemed as voluntary appearance finds support in the kindred *Republic v. Ker & Co., Ltd.* and *De Midgely v. Ferandos*.

5. ID.; ID.; ID.; ID.; A SPECIAL APPEARANCE BEFORE THE COURT CHALLENGING ITS JURISDICTION OVER THE PERSON THROUGH A MOTION TO DISMISS EVEN IF THE MOVANT INVOKES OTHER GROUNDS IS NOT TANTAMOUNT TO ESTOPPEL OR WAIVER BY THE MOVANT OF HIS OBJECTION TO THE JURISDICTION OVER HIS PERSON, AND SUCH IS NOT CONSTITUTIVE OF A VOLUNTARY SUBMISSION TO THE JURISDICTION OF THE COURT.— *Republic* and *De Midgely*, however, have already been modified if not altogether superseded by *La Naval Drug Corporation v. Court of Appeals*, wherein the Court essentially ruled and elucidated on the current view in our jurisdiction, to wit: "[A] special appearance before the court —challenging its jurisdiction over the person through a motion to dismiss even if the movant invokes other grounds—is not tantamount to estoppel or a waiver by the movant of his objection to jurisdiction over his person; and such is not constitutive of a voluntary submission to the jurisdiction of the court." In the instant case, KIC was not made a party-defendant in Civil Case No. 99-93173. Even if it is conceded that it raised affirmative

defenses through its aforementioned pleadings, KIC never abandoned its challenge, however implicit, to the RTC's jurisdiction over its person. The challenge was subsumed in KIC's primary assertion that it was not the same entity as Kukan, Inc. Pertinently, in its Comment and Opposition to Plaintiff's Omnibus Motion dated May 20, 2003, KIC entered its "**special but not voluntary appearance**" alleging therein that it was a different entity and has a separate legal personality from Kukan, Inc. And KIC would consistently reiterate this assertion in all its pleadings, thus effectively resisting all along the RTC's jurisdiction of its person. It cannot be overemphasized that KIC could not file before the RTC a motion to dismiss and its attachments in Civil Case No. 99-93173, precisely because KIC was neither impleaded nor served with summons. Consequently, KIC could only assert and claim through its affidavits, comments, and motions filed by special appearance before the RTC that it is separate and distinct from Kukan, Inc. Following *La Naval Drug Corporation*, KIC cannot be deemed to have waived its objection to the court's lack of jurisdiction over its person. It would defy logic to say that KIC unequivocally submitted itself to the jurisdiction of the RTC when it strongly asserted that it and Kukan, Inc. are different entities. In the scheme of things obtaining, KIC had no other option but to insist on its separate identity and plead for relief consistent with that position.

6. MERCANTILE LAW; CORPORATION CODE; PRINCIPLE OF PIERCING THE VEIL OF CORPORATE FICTION; A CORPORATION NOT IMPLEADED IN A SUIT CANNOT BE SUBJECT TO THE COURT'S PROCESS OF PIERCING THE VEIL OF ITS CORPORATE FICTION.— The principle of piercing the veil of corporate fiction, and the resulting treatment of two related corporations as one and the same juridical person with respect to a given transaction, is basically applied only to determine established liability; it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Elsewise put, a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction. In that situation, the court has not acquired jurisdiction over the corporation and, hence, any proceedings taken against that corporation and its property would infringe on its right to due process. Aguedo Agbayani, a recognized authority on

Commercial Law, stated as much: 23. Piercing the veil of corporate entity applies to determination of liability not of jurisdiction. x x x **This is so because the doctrine of piercing the veil of corporate fiction comes to play only during the trial of the case after the court has already acquired jurisdiction over the corporation.** Hence, before this doctrine can be applied, based on the evidence presented, it is imperative that the court must first have jurisdiction over the corporation. x x x The implication of the above comment is twofold: (1) the court must first acquire jurisdiction over the corporation or corporations involved before its or their separate personalities are disregarded; and (2) the doctrine of piercing the veil of corporate entity can only be raised during a full-blown trial over a cause of action duly commenced involving parties duly brought under the authority of the court by way of service of summons or what passes as such service.

7. ID.; ID.; ID.; A NEW CAUSE OF ACTION SHOULD BE PROPERLY VENTILATED IN ANOTHER COMPLAINT AND SUBSEQUENT TRIAL WHERE THE DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION CAN, IF APPROPRIATE, BE APPLIED, BASED ON THE EVIDENCE ADDUCED.— Morales espouses the application of the principle of piercing the corporate veil to hold KIC liable on theory that Kukan, Inc. was out to defraud him through the use of the separate and distinct personality of another corporation, KIC. In net effect, Morales' adverted motion to pierce the veil of corporate fiction dated January 3, 2007 stated a new cause of action, *i.e.*, for the liability of judgment debtor Kukan, Inc. to be borne by KIC on the alleged identity of the two corporations. This new cause of action should be properly ventilated in another complaint and subsequent trial where the doctrine of piercing the corporate veil can, if appropriate, be applied, based on the evidence adduced. Establishing the claim of Morales and the corresponding liability of KIC for Kukan Inc.'s indebtedness could hardly be the subject, under the premises, of a mere motion interposed after the principal action against Kukan, Inc. alone had peremptorily been terminated. After all, a complaint is one where the plaintiff alleges causes of action. In any event, the principle of piercing the veil of corporate fiction finds no application to the instant case.

8. ID.; ID.; ID.; IT MUST BE SHOWN BY CLEAR AND CONVINCING PROOF THAT THE SEPARATE AND

DISTINCT PERSONALITY OF THE CORPORATION WAS PURPOSEFULLY EMPLOYED TO EVADE A LEGITIMATE AND BINDING COMMITMENT AND PERPETRATE A FRAUD OR LIKE WRONGDOINGS.— To justify the piercing of the veil of corporate fiction, it must be shown by clear and convincing proof that the separate and distinct personality of the corporation was purposefully employed to evade a legitimate and binding commitment and perpetuate a fraud or like wrongdoings. To be sure, the Court has, on numerous occasions, applied the principle where a corporation is dissolved and its assets are transferred to another to avoid a financial liability of the first corporation with the result that the second corporation should be considered a continuation and successor of the first entity.

9. ID.; ID.; ID.; NO COMPELLING JUSTIFICATION FOR DISREGARDING THE FICTION OF CORPORATE ENTITY IN CASE AT BAR; FACTORS THAT WILL JUSTIFY PIERCING OF THE VEIL OF CORPORATE FICTION.— In those instances when the Court pierced the veil of corporate fiction of two corporations, there was a confluence of the following factors: 1. A first corporation is dissolved; 2. The assets of the first corporation is transferred to a second corporation to avoid a financial liability of the first corporation; and 3. Both corporations are owned and controlled by the same persons such that the second corporation should be considered as a continuation and successor of the first corporation. In the instant case, however, the second and third factors are conspicuously absent. There is, therefore, no compelling justification for disregarding the fiction of corporate entity separating Kukan, Inc. from KIC. In applying the principle, both the RTC and the CA miserably failed to identify the presence of the abovementioned factors.

10. ID.; ID.; ID.; MERE OWNERSHIP BY A SINGLE STOCKHOLDER OR BY ANOTHER CORPORATION OF A SUBSTANTIAL BLOCK OF SHARES OF A CORPORATION DOES NOT, STANDING ALONE, PROVIDE SUFFICIENT JUSTIFICATION FOR DISREGARDING THE SEPARATE CORPORATE PERSONALITY.— As is apparent from its disquisition, the RTC brushed aside the separate corporate existence of Kukan, Inc. and KIC on the main argument that Michael Chan owns

40% of the common shares of both corporations, obviously oblivious that overlapping stock ownership is a common business phenomenon. It must be remembered, however, that KIC's properties were the ones seized upon levy on execution and not that of Kukan, Inc. or of Michael Chan for that matter. Mere ownership by a single stockholder or by another corporation of a substantial block of shares of a corporation does not, standing alone, provide sufficient justification for disregarding the separate corporate personality. For this ground to hold sway in this case, there must be proof that Chan had control or complete dominion of Kukan and KIC's finances, policies, and business practices; he used such control to commit fraud; and the control was the proximate cause of the financial loss complained of by Morales. The absence of any of the elements prevents the piercing of the corporate veil. And indeed, the records do not show the presence of these elements.

11. ID.; ID.; ID.; FRAUD WAS NEVER ESTABLISHED.— The CA found the meager paid-up capitalization of Kukan, Inc. and the similarity of the business activities in which both corporations are engaged as a jumping board to its conclusion that the creation of KIC "served as a device to evade the obligation incurred by Kukan, Inc." The appellate court, however, left a gaping hole by failing to demonstrate that Kukan, Inc. and its stockholders defrauded Morales. In fine, there is no showing that the incorporation, and the separate and distinct personality, of KIC was used to defeat Morales' right to recover from Kukan, Inc. Judging from the records, no serious attempt was made to levy on the properties of Kukan, Inc. Morales could not, thus, validly argue that Kukan, Inc. tried to avoid liability or had no property against which to proceed.

12. ID.; ID.; ID.; PAID-UP CAPITAL IS MERELY SEED MONEY TO START A CORPORATION OR BUSINESS ENTITY; THE FACT THAT PETITIONER CORPORATION ENTERED INTO A PHP 3.3 MILLION CONTRACT WHEN IT ONLY HAD A PAID-UP CAPITAL OF PHP 5,000 IS NOT AN INDICATION OF THE PART OF ITS MANAGEMENT TO DEFRAUD CREDITORS.— Morales further contends that Kukan, Inc.'s closure is evidenced by its failure to file its 2001 General Information Sheet (GIS) with the Securities and Exchange Commission. However, such fact does not necessarily mean that Kukan, Inc. had altogether ceased operations, as Morales would have this Court believe, for it is stated on the

face of the GIS that it is only upon a failure to file the corporate GIS for **five (5) consecutive years** that non-operation shall be presumed. The fact that Kukan, Inc. entered into a PhP 3.3 million contract when it only had a paid-up capital of PhP 5,000 is not an indication of the intent on the part of its management to defraud creditors. Paid-up capital is merely seed money to start a corporation or a business entity. As in this case, it merely represented the capitalization **upon incorporation in 1997** of Kukan, Inc. Paid-up capitalization of PhP 5,000 is not and should not be taken as a reflection of the firm's capacity to meet its recurrent and long-term obligations. It must be borne in mind that the equity portion cannot be equated to the viability of a business concern, for the best test is the working capital which consists of the liquid assets of a given business relating to the nature of the business concern. Neither should the level of paid-up capital of Kukan, Inc. upon its incorporation be viewed as a badge of fraud, for it is in compliance with Sec. 13 of the Corporation Code, which only requires a minimum paid-up capital of PhP 5,000.

13. ID.; ID.; ID.; NO SUBSTANTIAL IDENTITY OF STOCKHOLDERS FOR BOTH CORPORATIONS.— The suggestion that KIC is but a continuation and successor of Kukan, Inc., owned and controlled as they are by the same stockholders, stands without factual basis. It is true that Michael Chan, *a.k.a.* Chan Kai Kit, owns 40% of the outstanding capital stock of both corporations. But such circumstance, standing alone, is insufficient to establish identity. There must be at least a substantial identity of stockholders for both corporations in order to consider this factor to be constitutive of corporate identity. It would not avail Morales any to rely on *General Credit Corporation v. Alsons Development and Investment Corporation. General Credit Corporation* is factually not on all fours with the instant case. There, the common stockholders of the corporations represented **90%** of the outstanding capital stock of the companies, unlike here where Michael Chan merely represents 40% of the outstanding capital stock of both KIC and Kukan, Inc., not even a majority of it. In that case, moreover, evidence was adduced to support the finding that the funds of the second corporation came from the first. Finally, there was proof in *General Credit Corporation* of complete control, such that one corporation was a mere dummy or alter ego of the other, which is absent

in the instant case. Evidently, the aforementioned case relied upon by Morales cannot justify the application of the principle of piercing the veil of corporate fiction to the instant case. As shown by the records, the name Michael Chan, the similarity of business activities engaged in, and incidentally the word "Kukan" appearing in the corporate names provide the nexus between Kukan, Inc. and KIC. As illustrated, these circumstances are insufficient to establish the identity of KIC as the alter ego or successor of Kukan, Inc.

14. ID.; ID.; ID.; THOSE WHO SEEK TO PIERCE THE VEIL MUST CLEARLY ESTABLISH THAT THE SEPARATE AND DISTINCT PERSONALITES OF THE CORPORATIONS ARE SET UP TO JUSTIFY A WRONG, PROTECT FRAUD, OR PERPETRATE A DECEPTION.— It bears reiterating that piercing the veil of corporate fiction is frowned upon. Accordingly, those who seek to pierce the veil must clearly establish that the separate and distinct personalities of the corporations are set up to justify a wrong, protect fraud, or perpetrate a deception. In the concrete and on the assumption that the RTC has validly acquired jurisdiction over the party concerned, Morales ought to have proved by convincing evidence that Kukan, Inc. was collapsed and thereafter KIC purposely formed and operated to defraud him. Morales has not to us discharged his burden.

APPEARANCES OF COUNSEL

Pelaez Gregorio Gregorio & Lim for petitioner.
Morales Rojas & Risos Vidal for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 45 seeks to nullify and reverse the January 23, 2008 Decision[1] and the

[1] *Rollo*, pp. 62-76. Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court) and concurred in by Associate Justices Arcangelita Romilla-Lontok and Romeo F. Barza.

April 16, 2008 Resolution[2] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 100152.

The assailed CA decision affirmed the March 12, 2007[3] and June 7, 2007[4] Orders of the Regional Trial Court (RTC) of Manila, Branch 21, in Civil Case No. 99-93173, entitled *Romeo M. Morales, doing business under the name and style RM Morales Trophies and Plaques v. Kukan, Inc*. In the said orders, the RTC disregarded the separate corporate identities of Kukan, Inc. and Kukan International Corporation and declared them to be one and the same entity. Accordingly, the RTC held Kukan International Corporation, albeit not impleaded in the underlying complaint of Romeo M. Morales, liable for the judgment award decreed in a Decision dated November 28, 2002[5] in favor of Morales and against Kukan, Inc.

The Facts

Sometime in March 1998, Kukan, Inc. conducted a bidding for the supply and installation of signages in a building being constructed in Makati City. Morales tendered the winning bid and was awarded the PhP 5 million contract. Some of the items in the project award were later excluded resulting in the corresponding reduction of the contract price to PhP 3,388,502. Despite his compliance with his contractual undertakings, Morales was only paid the amount of PhP 1,976,371.07, leaving a balance of PhP 1,412,130.93, which Kukan, Inc. refused to pay despite demands. Shortchanged, Morales filed a Complaint[6] with the RTC against Kukan, Inc. for a sum of money, the case docketed as Civil Case No. 99-93173 and eventually raffled to Branch 17 of the court.

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[2] *Id.* at 78-79.

[3] *Id.* at 171-173.

[4] *Id.* at 216-217.

[5] *Id.* at 89-91.

[6] *Id.* at 80-88.

Following the joinder of issues after Kukan, Inc. filed an answer with counterclaim, trial ensued. However, starting November 2000, Kukan, Inc. no longer appeared and participated in the proceedings before the trial court, prompting the RTC to declare Kukan, Inc. in default and paving the way for Morales to present his evidence *ex parte*.

On November 28, 2002, the RTC rendered a Decision finding for Morales and against Kukan, Inc., disposing as follows:

> WHEREFORE, consistent with Section 5, Rule 18 of the 1997 Rules of Civil Procedure, and by preponderance of evidence, judgment is hereby rendered in favor of the plaintiff, ordering Kukan, Inc.:
>
> 1. to pay the sum of ONE MILLION TWO HUNDRED ONE THOUSAND SEVEN HUNDRED TWENTY FOUR PESOS (₱1,201,724.00) with legal interest at 12% per annum from February 17, 1999 until full payment;
> 2. to pay the sum of FIFTY THOUSAND PESOS (₱50,000.00) as moral damages;
> 3. to pay the sum of TWENTY THOUSAND PESOS, (₱20,000.00) as reasonable attorney's fees; and
> 4. to pay the sum of SEVEN THOUSAND NINE HUNDRED SIXTY PESOS and SIX CENTAVOS (₱7,960.06) as litigation expenses.
>
> For lack of factual foundation, the counterclaim is DISMISSED.
>
> IT IS SO ORDERED.[7]

After the above decision became final and executory, Morales moved for and secured a writ of execution[8] against Kukan, Inc. The sheriff then levied upon various personal properties found at what was supposed to be Kukan, Inc.'s office at Unit 2205, 88 Corporate Center, Salcedo Village, Makati City. Alleging that it owned the properties thus levied and that it was a different corporation from Kukan, Inc., Kukan International Corporation (KIC) filed an Affidavit of Third-Party Claim. Notably, KIC

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[7] *Id.* at 90-91.

[8] *Id.* at 97, dated February 7, 2003.

was incorporated in August 2000, or shortly after Kukan, Inc. had stopped participating in Civil Case No. 99-93173.

In reaction to the third party claim, Morales interposed an Omnibus Motion dated April 30, 2003. In it, Morales prayed, applying the principle of piercing the veil of corporate fiction, that an order be issued for the satisfaction of the judgment debt of Kukan, Inc. with the properties under the name or in the possession of KIC, it being alleged that both corporations are but one and the same entity. KIC opposed Morales' motion. By Order of May 29, 2003[9] as reiterated in a subsequent order, the court denied the omnibus motion.

In a bid to establish the link between KIC and Kukan, Inc., and thus determine the true relationship between the two, Morales filed a Motion for Examination of Judgment Debtors dated May 4, 2005. In this motion Morales sought that subponae be issued against the primary stockholders of Kukan, Inc., among them Michael Chan, a.k.a. Chan Kai Kit. This too was denied by the trial court in an Order dated May 24, 2005.[10]

Morales then sought the inhibition of the presiding judge, Eduardo B. Peralta, Jr., who eventually granted the motion. The case was re-raffled to Branch 21, presided by public respondent Judge Amor Reyes.

Before the Manila RTC, Branch 21, Morales filed a Motion to Pierce the Veil of Corporate Fiction to declare KIC as having no existence separate from Kukan, Inc. This time around, the RTC, by Order dated March 12, 2007, granted the motion, the dispositive portion of which reads:

WHEREFORE, premises considered, the motion is hereby GRANTED. The Court hereby declares as follows:

1. defendant Kukan, Inc. and newly created Kukan International Corp. as one and the same corporation;

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[9] *Id.* at 127.

[10] *Id.* at 141.

2. the levy made on the properties of Kukan International Corp. is hereby valid;

3. Kukan International Corp. and Michael Chan are jointly and severally liable to pay the amount awarded to plaintiff pursuant to the decision of November [28], 2002 which has long been final and executory.

SO ORDERED.

From the above order, KIC moved but was denied reconsideration in another Order dated June 7, 2007.

KIC went to the CA on a petition for *certiorari* to nullify the aforesaid March 12 and June 7, 2007 RTC Orders.

On January 23, 2008, the CA rendered the assailed decision, the dispositive portion of which states:

WHEREFORE, premises considered, the petition is hereby DENIED and the assailed Orders dated March 12, 2007 and June 7, 2007 of the court *a quo* are both AFFIRMED. No costs.

SO ORDERED.[11]

The CA later denied KIC's motion for reconsideration in the assailed resolution.

Hence, the instant petition for review, with the following issues KIC raises for the Court's consideration:

1. There is no legal basis for the [CA] to resolve and declare that petitioner's Constitutional Right to Due Process was not violated by the public respondent in rendering the Orders dated March 12, 2007 and June 7, 2007 and in declaring petitioner to be liable for the judgment obligations of the corporation "Kukan, Inc." to private respondent – as petitioner is a stranger to the case and was never made a party in the case before the trial court nor was it ever served a summons and a copy of the complaint.

2. There is no legal basis for the [CA] to resolve and declare that the Orders dated March 12, 2007 and June 7, 2007

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[11] *Id.* at 75.

rendered by public respondent declaring the petitioner liable to the judgment obligations of the corporation "Kukan, Inc." to private respondent are valid as said orders of the public respondent modify and/or amend the trial court's final and executory decision rendered on November 28, 2002.

3. There is no legal basis for the [CA] to resolve and declare that the Orders dated March 12, 2007 and June 7, 2007 rendered by public respondent declaring the petitioner [KIC] and the corporation "Kukan, Inc." as one and the same, and, therefore, the Veil of Corporate Fiction between them be pierced – as the procedure undertaken by public respondent which the [CA] upheld is not sanctioned by the Rules of Court and/or established jurisprudence enunciated by this Honorable Supreme Court.[12]

In gist, the issues to be resolved boil down to the question of, *first*, whether the trial court can, after the judgment against Kukan, Inc. has attained finality, execute it against the property of KIC; *second*, whether the trial court acquired jurisdiction over KIC; and *third*, whether the trial and appellate courts correctly applied, under the premises, the principle of piercing the veil of corporate fiction.

The Ruling of the Court

The petition is meritorious.

First Issue: Against Whom Can a Final and Executory Judgment Be Executed

The preliminary question that must be answered is whether or not the trial court can, after adjudging Kukan, Inc. liable for a sum of money in a final and executory judgment, execute such judgment debt against the property of KIC.

The poser must be answered in the negative.

In *Carpio v. Doroja*,[13] the Court ruled that the deciding court has supervisory control over the execution of its judgment:

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[12] *Id.* at 28-29. Original in upper case.

[13] G.R. No. 84516, December 5, 1989, 180 SCRA 1, 7.

A case in which an execution has been issued is regarded as still pending so that all proceedings on the execution are proceedings in the suit. There is no question that the court which rendered the judgment has a general supervisory control over its process of execution, and this power carries with it the right to determine every question of fact and law which may be involved in the execution.

We reiterated the above holding in *Javier v. Court of Appeals*[14] in this wise: "The said branch has a general supervisory control over its processes in the execution of its judgment with a right to determine every question of fact and law which may be involved in the execution."

The court's supervisory control does not, however, extend as to authorize the alteration or amendment of a final and executory decision, save for certain recognized exceptions, among which is the correction of clerical errors. Else, the court violates the principle of finality of judgment and its immutability, concepts which the Court, in *Tan v. Timbal*,[15] defined:

As we held in *Industrial Management International Development Corporation vs. NLRC*:

> It is an elementary principle of procedure that the resolution of the court in a given issue as embodied in the dispositive part of a decision or order is the controlling factor as to settlement of rights of the parties. **Once a decision or order becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend it. It thereby becomes immutable and unalterable and any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose. An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity.** (Emphasis supplied.)

Republic v. Tango[16] expounded on the same principle and its exceptions:

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[14] G.R. No. 97795, February 16, 2004, 423 SCRA 11, 33.

[15] G.R. No. 141926, July 14, 2004, 434 SCRA 381, 386.

[16] G.R. No. 161062, July 31, 2009, 594 SCRA 560, 568.

Deeply ingrained in our jurisprudence is the principle that **a decision that has acquired finality becomes immutable and unalterable.** As such, **it may no longer be modified** in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. x x x

The doctrine of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final on some definite date fixed by law. **The only exceptions** to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable. None of the exceptions obtains here to merit the review sought. (Emphasis added.)

So, did the RTC, in breach of the doctrine of immutability and inalterability of judgment, order the execution of its final decision in a manner as would amount to its prohibited alteration or modification?

We repair to the dispositive portion of the final and executory RTC decision. Pertinently, it provides:

WHEREFORE, consistent with Section 5, Rule 18 of the 1997 Rules of Civil Procedure, and by preponderance of evidence, judgment is hereby rendered in favor of the plaintiff, ordering **Kukan, Inc.**:

1. to pay the sum of ONE MILLION TWO HUNDRED ONE THOUSAND SEVEN HUNDRED TWENTY FOUR PESOS (₱1,201,724.00) with legal interest at 12% per annum from February 17, 1999 until full payment;

2. to pay the sum of FIFTY THOUSAND PESOS (₱50,000.00) as moral damages;

3. to pay the sum of TWENTY THOUSAND PESOS (₱20,000.00) as reasonable attorney's fees; and

4. to pay the sum of SEVEN THOUSAND NINE HUNDRED SIXTY PESOS and SIX CENTAVOS (₱7,960.06) as litigation expenses.

x x x x x x x x x (Emphasis supplied.)

As may be noted, the above decision, in unequivocal terms, directed Kukan, Inc. to pay the aforementioned awards to Morales. Thus, making KIC, thru the medium of a writ of execution, answerable for the above judgment liability is a clear case of altering a decision, an instance of granting relief not contemplated in the decision sought to be executed. And the change does not fall under any of the recognized exceptions to the doctrine of finality and immutability of judgment. It is a settled rule that a writ of execution must conform to the *fallo* of the judgment; as an inevitable corollary, a writ beyond the terms of the judgment is a nullity.[17]

Thus, on this ground alone, the instant petition can already be granted. Nonetheless, an examination of the other issues raised by KIC would be proper.

Second Issue: Propriety of the RTC Assuming Jurisdiction over KIC

The next issue turns on the validity of the execution the trial court authorized against KIC and its property, given that it was neither made a party nor impleaded in Civil Case No. 99-93173, let alone served with summons. In other words, did the trial court acquire jurisdiction over KIC?

In the assailed decision, the appellate court deemed KIC to have voluntarily submitted itself to the jurisdiction of the trial court owing to its filing of four (4) pleadings adverted to earlier, namely: (a) the Affidavit of Third-Party Claim;[18] (b) the Comment and Opposition to Plaintiff's Omnibus Motion;[19] (c) the Motion for Reconsideration of the RTC Order dated March 12, 2007;[20] and (d) the Motion for Leave to Admit Reply.[21] The CA, citing

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[17] *B.E. San Diego, Inc. v. Alzul*, G.R. No. 169501, June 8, 2007, 524 SCRA 402, 433; citing *Villoria v. Piccio, et al.*, 95 Phil. 802, 805-806 (1954).

[18] *Rollo*, pp. 98-101.

[19] *Id.* at 117-126.

[20] *Id.* at 174-187.

[21] *Id.* at 198-200.

Section 20, Rule 14 of the Rules of Court, stated that "the procedural rule on service of summons can be waived by voluntary submission to the court's jurisdiction through any form of appearance by the party or its counsel."[22]

We cannot give imprimatur to the appellate court's appreciation of the thrust of Sec. 20, Rule 14 of the Rules in concluding that the trial court acquired jurisdiction over KIC.

Orion Security Corporation v. Kalfam Enterprises, Inc.[23] explains how courts acquire jurisdiction over the parties in a civil case:

> Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint. **On the other hand, jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them or through their voluntary appearance in court and their submission to its authority.** (Emphasis supplied.)

In the fairly recent *Palma v. Galvez*,[24] the Court reiterated its holding in *Orion Security Corporation,* stating: "[I]n civil cases, the trial court acquires jurisdiction over the person of the defendant either by the service of summons or by the latter's voluntary appearance and submission to the authority of the former."

The court's jurisdiction over a party-defendant resulting from his voluntary submission to its authority is provided under Sec. 20, Rule 14 of the Rules, which states:

> Section 20. *Voluntary appearance*. — The defendant's voluntary appearance in the actions shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

To be sure, the CA's ruling that any form of appearance by the party or its counsel is deemed as voluntary appearance finds

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[22] *Id.* at 69-70.

[23] G.R. No. 163287, April 27, 2007, 522 SCRA 617, 622.

[24] G.R. No. 165273, March 10, 2010.

support in the kindred *Republic v. Ker & Co., Ltd.*[25] and *De Midgely v. Ferandos*.[26]

Republic and *De Midgely*, however, have already been modified if not altogether superseded[27] by *La Naval Drug Corporation v. Court of Appeals*,[28] wherein the Court essentially

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[25] No. L-21609, September 29, 1966, 18 SCRA 207, 213-214. The Court ruled:

> We observed that the motion to dismiss filed on April 14, 1962, aside from disputing the lower court's jurisdiction over defendant's person, prayed for dismissal of the complaint on the ground that plaintiff's cause of action had prescribed. By interposing such second ground in its motion to dismiss, Ker & Co., Ltd. availed of an affirmative defense on the basis of which it prayed the court to resolve controversy in its favor. For the court to validly decide the said plea of defendant Ker & Co., Ltd., it necessarily had to acquire jurisdiction upon the latter's person, who, being the proponent of the affirmative defense, should be deemed to have abandoned its special appearance and voluntarily submitted itself to the jurisdiction of the court.
>
> Voluntary appearance cures defects of summons, if any x x x. A defendant can not be permitted to speculate upon the judgment of the court by objecting to the court's jurisdiction over its person if the judgment is adverse to it, and acceding to jurisdiction over its person if and when the judgment sustains its defenses.

[26] No. L-34313, May 13, 1975, 64 SCRA 23, 31. The Court also ruled:

> When the appearance is by motion for the purpose of objecting to the jurisdiction of the court over the person, it must be for the sole and separate purpose of objecting to the jurisdiction of the court. If his motion is for any other purpose than to object to the jurisdiction of the court over his person, he thereby submits himself to the jurisdiction of the court. A special appearance by motion made for the purpose of objecting to the jurisdiction of the court over the person will be held to be a general appearance, if the party in said motion should, for example, ask for a dismissal of the action upon the further ground that the court had no jurisdiction over the subject matter.

[27] *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation*, G.R. No. 172242, August 14, 2007, 530 SCRA 170.

[28] G.R. No. 103200, August 31, 1994, 236 SCRA 78, 87-88. The Court held, thus:

> The doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. It

ruled and elucidated on the current view in our jurisdiction, to wit: "[A] special appearance before the court—challenging its jurisdiction over the person through a motion to dismiss even if the movant invokes other grounds—is not tantamount to estoppel

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is a principle intended to avoid a clear case of injustice. The term is hardly distinguishable from a waiver of right. Estoppel, like its said counterpart, must be unequivocal and intentional for, when misapplied, it can easily become a most convenient and effective means of injustice. Estoppel is not understood to be a principle that, as a rule, should prevalently apply but, such as it concededly is, as a mere exception from the standard legal norms of general application that can be invoked only in highly exceptional and justifiable cases.

Tested by the above criteria, the Court sees it propitious to re-examine specifically the question of **whether or not the submission of other issues in a motion to dismiss, or of an affirmative defense (as distinguished from an affirmative relief) in an answer, would necessarily foreclose, and have the effect of a waiver of, the right of a defendant to set up the court's lack of jurisdiction over the person of the defendant**.

Not inevitably.

Section 1, Rule 16, of the Rules of Court, provides that a motion to dismiss may be made on the following grounds:

(a) That the court has no jurisdiction over the person of the defendant or over the subject of the action or suit;
(b) That the court has no jurisdiction over the nature of the action or suit;
(c) The venue is improperly laid;
(d) That the plaintiff has no legal capacity to sue;
(e) That there is another action pending between the same parties for the same cause;
(f) That the cause of action is barred by a prior judgment or by statute of limitations;
(g) That the complaint states no cause of action;
(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
(i) That the claim on which the action or suit is founded is unenforceable under the provisions of the statute of frauds;
(j) That the suit is between members of the same family and no earnest efforts towards a compromise have been made.

Any ground for dismissal in a motion to dismiss, except improper venue, may, as further set forth in Section 5 of the same rule, be pleaded as an affirmative defense and a preliminary hearing may be had thereon

or a waiver by the movant of his objection to jurisdiction over his person; and such is not constitutive of a voluntary submission to the jurisdiction of the court."[29]

In the instant case, KIC was not made a party-defendant in Civil Case No. 99-93173. Even if it is conceded that it raised affirmative defenses through its aforementioned pleadings, KIC never abandoned its challenge, however implicit, to the RTC's jurisdiction over its person. The challenge was subsumed in KIC's primary assertion that it was not the same entity as Kukan, Inc. Pertinently, in its Comment and Opposition to Plaintiff's Omnibus Motion dated May 20, 2003, KIC entered its "**special but not voluntary appearance**" alleging therein that it was a different entity and has a separate legal personality from Kukan, Inc. And KIC would consistently reiterate this assertion in all its pleadings, thus effectively resisting all along the RTC's

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as if a motion to dismiss had been filed. An answer itself contains the negative, as well as affirmative, defenses upon which the defendant may rely (Section 4, Rule 6, Rules of Court). A negative defense denies the material facts averred in the complaint essential to establish the plaintiff's cause of action, while an affirmative defense in an allegation of a new matter which, while admitting the material allegations of the complaint, would, nevertheless, prevent or bar recovery by the plaintiff. Inclusive of these defenses are those mentioned in Rule 16 of the Rules of Court which would permit the filing of a motion to dismiss.

In the same manner that the plaintiff may assert two or more causes of action in a court suit, a defendant is likewise expressly allowed, under Section 2, Rule 8, of the Rules of Court, to put up his own defenses alternatively or even hypothetically. Indeed, under Section 2, Rule 9, of the Rules of Court, defenses and objections not pleaded either in a motion to dismiss or in an answer, except for the failure to state a cause of action, are deemed waived. We take this to mean that a defendant may, in fact, feel enjoined to set up, along with his objection to the court's jurisdiction over his person, all other possible defenses. It thus appears that it is not the invocation of any of such defenses, but the failure to so raise them, that can result in waiver or estoppel. By defenses, of course, we refer to the grounds provided for in Rule 16 of the Rules of Court that must be asserted in a motion to dismiss or by way of affirmative defenses in an answer. (Emphasis supplied.)

[29] *Garcia v. Sandiganbayan*, G.R. Nos. 170122 & 171381, October 12, 2009, 603 SCRA 348, 367.

jurisdiction of its person. It cannot be overemphasized that KIC could not file before the RTC a motion to dismiss and its attachments in Civil Case No. 99-93173, precisely because KIC was neither impleaded nor served with summons. Consequently, KIC could only assert and claim through its affidavits, comments, and motions filed by special appearance before the RTC that it is separate and distinct from Kukan, Inc.

Following *La Naval Drug Corporation*,[30] KIC cannot be deemed to have waived its objection to the court's lack of jurisdiction over its person. It would defy logic to say that KIC unequivocally submitted itself to the jurisdiction of the RTC when it strongly asserted that it and Kukan, Inc. are different entities. In the scheme of things obtaining, KIC had no other option but to insist on its separate identity and plead for relief consistent with that position.

Third Issue: Piercing the Veil of Corporate Fiction

The third and main issue in this case is whether or not the trial and appellate courts correctly applied the principle of piercing the veil of corporate entity—called also as disregarding the fiction of a separate juridical personality of a corporation—to support a conclusion that Kukan, Inc. and KIC are but one and the same corporation with respect to the contract award referred to at the outset. This principle finds its context on the postulate that a corporation is an artificial being invested with a personality separate and distinct from those of the stockholders and from other corporations to which it may be connected or related.[31]

In *Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission*,[32] the Court revisited the subject principle of piercing the veil of corporate fiction and wrote:

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[30] *Supra* note 28.

[31] *Jardine Davies, Inc. v. JRB Realty, Inc.*, G.R. No. 151438, July 15, 2005, 463 SCRA 555, 563.

[32] G.R. No. 170689, March 17, 2009, 581 SCRA 598, 613-614.

Under the doctrine of "piercing the veil of corporate fiction," the court looks at the corporation as a mere collection of individuals or an aggregation of persons undertaking business as a group, disregarding the separate juridical personality of the corporation unifying the group. **Another formulation** of this doctrine **is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or as one and the same.**

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. x x x (Emphasis supplied.)

The same principle was the subject and discussed in *Rivera v. United Laboratories, Inc.*:

While a corporation may exist for any lawful purpose, the law will regard it as an association of persons or, **in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction. The doctrine applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues**, or where a corporation is the mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.[33] (Emphasis supplied.)

Now, as before the appellate court, petitioner KIC maintains that the RTC violated its right to due process when, in the execution of its November 28, 2002 Decision, the court authorized

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[33] G.R. No. 155639, April 22, 2009, 586 SCRA 269, 300.

the issuance of the writ against KIC for Kukan, Inc.'s judgment debt, albeit KIC has never been a party to the underlying suit. As a counterpoint, Morales argues that KIC's specific concern on due process and on the validity of the writ to execute the RTC's November 28, 2002 Decision would be mooted if it were established that KIC and Kukan, Inc. are indeed one and the same corporation.

Morales' contention is untenable.

The principle of piercing the veil of corporate fiction, and the resulting treatment of two related corporations as one and the same juridical person with respect to a given transaction, is basically applied only to determine established liability;[34] it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Elsewise put, a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction. In that situation, the court has not acquired jurisdiction over the corporation and, hence, any proceedings taken against that corporation and its property would infringe on its right to due process. Aguedo Agbayani, a recognized authority on Commercial Law, stated as much:

> 23. Piercing the veil of corporate entity applies to determination of liability not of jurisdiction. x x x
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> **This is so because the doctrine of piercing the veil of corporate fiction comes to play only during the trial of the case after the court has already acquired jurisdiction over the corporation.** Hence, before this doctrine can be applied, based on the evidence presented, it is imperative that the court must first have jurisdiction over the corporation.[35] x x x (Emphasis supplied.)

The implication of the above comment is twofold: (1) the court must first acquire jurisdiction over the corporation or

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[34] *Heirs of the Late Panfilo V. Pajarillo v. Court of Appeals*, G.R. Nos. 155056-57, October 19, 2007, 537 SCRA 96, 112.

[35] 3 A. Agbayani, COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES 18 (1991).

corporations involved before its or their separate personalities are disregarded; and (2) the doctrine of piercing the veil of corporate entity can only be raised during a full-blown trial over a cause of action duly commenced involving parties duly brought under the authority of the court by way of service of summons or what passes as such service.

The issue of jurisdiction or the lack of it over KIC has already been discussed. Anent the matter of the time and manner of raising the principle in question, it is undisputed that no full-blown trial involving KIC was had when the RTC disregarded the corporate veil of KIC. The reason for this actuality is simple and undisputed: KIC was not impleaded in Civil Case No. 99-93173 and that the RTC did not acquire jurisdiction over it. It was dragged to the case after it reacted to the improper execution of its properties and veritably hauled to court, not thru the usual process of service of summons, but by mere motion of a party with whom it has no privity of contract and after the decision in the main case had already become final and executory. As to the propriety of a plea for the application of the principle by mere motion, the following excerpts are instructive:

Generally, a motion is appropriate only in the absence of remedies by regular pleadings, and is not available to settle important questions of law, or to dispose of the merits of the case. A motion is usually a proceeding incidental to an action, but it may be a wholly distinct or independent proceeding. A motion in this sense is not within this discussion even though the relief demanded is denominated an "order."

A motion generally relates to procedure and is often resorted to in order to correct errors which have crept in along the line of the principal action's progress. Generally, where there is a procedural defect in a proceeding and no method under statute or rule of court by which it may be called to the attention of the court, a motion is an appropriate remedy. In many jurisdictions, the motion has replaced the common-law pleas testing the sufficiency of the pleadings, and various common-law writs, such as writ of error *coram nobis* and *audita querela*. In some cases, a motion may be one of several remedies available. For example, in some jurisdictions, a motion to vacate an order is a remedy alternative to an appeal therefrom.

Statutes governing motions are given a liberal construction.[36] (Emphasis supplied.)

The bottom line issue of whether Morales can proceed against KIC for the judgment debt of Kukan, Inc.––assuming hypothetically that he can, applying the piercing the corporate veil principle––resolves itself into the question of whether a mere motion is the appropriate vehicle for such purpose.

Verily, Morales espouses the application of the principle of piercing the corporate veil to hold KIC liable on theory that Kukan, Inc. was out to defraud him through the use of the separate and distinct personality of another corporation, KIC. In net effect, Morales' adverted motion to pierce the veil of corporate fiction dated January 3, 2007 stated a new cause of action, *i.e.*, for the liability of judgment debtor Kukan, Inc. to be borne by KIC on the alleged identity of the two corporations. This new cause of action should be properly ventilated in another complaint and subsequent trial where the doctrine of piercing the corporate veil can, if appropriate, be applied, based on the evidence adduced. Establishing the claim of Morales and the corresponding liability of KIC for Kukan Inc.'s indebtedness could hardly be the subject, under the premises, of a mere motion interposed after the principal action against Kukan, Inc. alone had peremptorily been terminated. After all, a complaint is one where the plaintiff alleges causes of action.

In any event, the principle of piercing the veil of corporate fiction finds no application to the instant case.

As a general rule, courts should be wary of lifting the corporate veil between corporations, however related. *Philippine National Bank v. Andrada Electric Engineering Company*[37] explains why:

A corporation is an artificial being created by operation of law. x x x It has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related. This is basic.

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[36] 56 AmJur 2d, Motions, Rules, and Orders, § 4, p. 5 (citations omitted).

[37] G.R. No. 142936, April 17, 2002, 381 SCRA 244, 254-255.

Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.

Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. **It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.**

This Court has pierced the corporate veil to ward off a judgment credit, to avoid inclusion of corporate assets as part of the estate of the decedent, to escape liability arising from a debt, or to perpetuate fraud and/or confuse legitimate issues either to promote or to shield unfair objectives or to cover up an otherwise blatant violation of the prohibition against forum-shopping. **Only in these and similar instances may the veil be pierced and disregarded**. (Emphasis supplied.)

In fine, to justify the piercing of the veil of corporate fiction, it must be shown by clear and convincing proof that the separate and distinct personality of the corporation was purposefully employed to evade a legitimate and binding commitment and perpetuate a fraud or like wrongdoings. To be sure, the Court has, on numerous occasions,[38] applied the principle where a corporation is dissolved and its assets are transferred to another

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[38] *Concept Builders, Inc. v. National Labor Relations Commission*, G.R. No. 108734, May 29, 1996, 257 SCRA 149; *Avon Dale Garments, Inc. v. National Labor Relations Commission*, G.R. No. 117932, July 20, 1995, 246 SCRA 733; *Pepsi-Cola Bottling Co. v. National Labor Relations Commission*, G.R. No. 101900, June 23, 1992, 210 SCRA 277; *Philippine Bank of Communications v. Court of Appeals*, G.R. No. 92067, March 22, 1991, 195 SCRA 567; *Cagayan Valley Enterprises, Inc. v. Court of Appeals*, G.R. No. 78413, November 8, 1989, 179 SCRA 218; *A.C. Ransom Labor Union CCLU v. National Labor Relations Commission*, G.R. No. 69494,

to avoid a financial liability of the first corporation with the result that the second corporation should be considered a continuation and successor of the first entity.

In those instances when the Court pierced the veil of corporate fiction of two corporations, there was a confluence of the following factors:

1. A first corporation is dissolved;
2. The assets of the first corporation is transferred to a second corporation to avoid a financial liability of the first corporation; and
3. Both corporations are owned and controlled by the same persons such that the second corporation should be considered as a continuation and successor of the first corporation.

In the instant case, however, the second and third factors are conspicuously absent. There is, therefore, no compelling justification for disregarding the fiction of corporate entity separating Kukan, Inc. from KIC. In applying the principle, both the RTC and the CA miserably failed to identify the presence of the abovementioned factors. Consider:

The RTC disregarded the separate corporate personalities of Kukan, Inc. and KIC based on the following premises and arguments:

> While it is true that a corporation has a separate and distinct personality from its stockholder, director and officers, the law expressly provides for an exception. When Michael Chan, the Managing Director of defendant Kukan, Inc. (majority stockholder of the newly formed corporation [KIC]) confirmed the award to plaintiff to supply and install interior signages in the Enterprise Center he (Michael Chan, Managing Director of defendant Kukan, Inc.) knew that there was no sufficient corporate funds to pay its obligation/ account, thus implying bad faith on his part and fraud in contracting

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May 29, 1987, 150 SCRA 498; *National Federation of Labor Unions (NAFLU) v. Ople*, G.R. No. 68661, July 22, 1986, 143 SCRA 128; *Claparols v. Court of Industrial Relations*, No. L-30822, July 31, 1975, 65 SCRA 613.

the obligation. Michael Chan neither returned the interior signages nor tendered payment to the plaintiff. This circumstance may warrant the piercing of the veil of corporation fiction. **Having been guilty of bad faith in the management of corporate matters the corporate trustee, director or officer may be held personally liable.** x x x

Since fraud is a state of mind, it need not be proved by direct evidence but may be inferred from the circumstances of the case. x x x [A]nd the circumstances are: the signature of Michael Chan, Managing Director of Kukan, Inc. appearing in the confirmation of the award sent to the plaintiff; signature of Chan Kai Kit, a British National appearing in the Articles of Incorporation and signature of Michael Chan also a British National appearing in the Articles of Incorporation [of] Kukan International Corp. give the impression that they are one and the same person, that Michael Chan and Chan Kai Kit are both majority stockholders of Kukan International Corp. and Kukan, Inc. holding 40% of the stocks; that Kukan International Corp. is practically doing the same kind of business as that of Kukan, Inc.[39] (Emphasis supplied.)

As is apparent from its disquisition, the RTC brushed aside the separate corporate existence of Kukan, Inc. and KIC on the main argument that Michael Chan owns 40% of the common shares of both corporations, obviously oblivious that overlapping stock ownership is a common business phenomenon. It must be remembered, however, that KIC's properties were the ones seized upon levy on execution and not that of Kukan, Inc. or of Michael Chan for that matter. Mere ownership by a single stockholder or by another corporation of a substantial block of shares of a corporation does not, standing alone, provide sufficient justification for disregarding the separate corporate personality.[40] For this ground to hold sway in this case, there must be proof that Chan had control or complete dominion of Kukan and KIC's finances, policies, and business practices; he used such control to commit fraud; and the control was the proximate cause of

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[39] *Rollo*, p. 173.

[40] *Francisco v. Mejia*, G.R. No. 141617, August 14, 2001, 362 SCRA 738.

the financial loss complained of by Morales. The absence of any of the elements prevents the piercing of the corporate veil.[41] And indeed, the records do not show the presence of these elements.

On the other hand, the CA held:

> In the present case, the facts disclose that Kukan, Inc. entered into a contractual obligation x x x worth more than three million pesos although it had only Php5,000.00 paid-up capital; [KIC] was incorporated shortly before Kukan, Inc. suddenly ceased to appear and participate in the trial; [KIC's] purpose is related and somewhat akin to that of Kukan, Inc.; and in [KIC] Michael Chan, a.k.a., Chan Kai Kit, holds forty percent of the outstanding stocks, while he formerly held the same amount of stocks in Kukan Inc. **These would lead to the inescapable conclusion that Kukan, Inc. committed fraudulent representation by awarding to the private respondent the contract with full knowledge that it was not in a position to comply with the obligation it had assumed because of inadequate paid-up capital.** It bears stressing that shareholders should in good faith put at the risk of the business, unencumbered capital reasonably adequate for its prospective liabilities. The capital should not be illusory or trifling compared with the business to be done and the risk of loss.
>
> Further, it is clear that [KIC] is a continuation and successor of Kukan, Inc. Michael Chan, a.k.a. Chan Kai Kit has the largest block of shares in both business enterprises. The emergence of the former was cleverly timed with the hasty withdrawal of the latter during the trial to avoid the financial liability that was eventually suffered by the latter. The two companies have a related business purpose. **Considering these circumstances, the obvious conclusion is that the creation of Kukan International Corporation served as a device to evade the obligation incurred by Kukan, Inc. and yet profit from the goodwill attained by the name "Kukan" by continuing to engage in the same line of business with the same list of clients.**[42] (Emphasis supplied.)

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[41] *Manila Hotel Corp. v. National Labor Relations Commission*, G.R. No. 120077, October 13, 2000, 343 SCRA 1, 15.

[42] *Rollo*, p. 74.

Evidently, the CA found the meager paid-up capitalization of Kukan, Inc. and the similarity of the business activities in which both corporations are engaged as a jumping board to its conclusion that the creation of KIC "served as a device to evade the obligation incurred by Kukan, Inc." The appellate court, however, left a gaping hole by failing to demonstrate that Kukan, Inc. and its stockholders defrauded Morales. In fine, there is no showing that the incorporation, and the separate and distinct personality, of KIC was used to defeat Morales' right to recover from Kukan, Inc. Judging from the records, no serious attempt was made to levy on the properties of Kukan, Inc. Morales could not, thus, validly argue that Kukan, Inc. tried to avoid liability or had no property against which to proceed.

Morales further contends that Kukan, Inc.'s closure is evidenced by its failure to file its 2001 General Information Sheet (GIS) with the Securities and Exchange Commission. However, such fact does not necessarily mean that Kukan, Inc. had altogether ceased operations, as Morales would have this Court believe, for it is stated on the face of the GIS that it is only upon a failure to file the corporate GIS for **five (5) consecutive years** that non-operation shall be presumed.

The fact that Kukan, Inc. entered into a PhP 3.3 million contract when it only had a paid-up capital of PhP 5,000 is not an indication of the intent on the part of its management to defraud creditors. Paid-up capital is merely seed money to start a corporation or a business entity. As in this case, it merely represented the capitalization **upon incorporation in 1997** of Kukan, Inc. Paid-up capitalization of PhP 5,000 is not and should not be taken as a reflection of the firm's capacity to meet its recurrent and long-term obligations. It must be borne in mind that the equity portion cannot be equated to the viability of a business concern, for the best test is the working capital which consists of the liquid assets of a given business relating to the nature of the business concern.

Neither should the level of paid-up capital of Kukan, Inc. upon its incorporation be viewed as a badge of fraud, for it is

in compliance with Sec. 13 of the Corporation Code,[43] which only requires a minimum paid-up capital of PhP 5,000.

The suggestion that KIC is but a continuation and successor of Kukan, Inc., owned and controlled as they are by the same stockholders, stands without factual basis. It is true that Michael Chan, a.k.a. Chan Kai Kit, owns 40% of the outstanding capital stock of both corporations. But such circumstance, standing alone, is insufficient to establish identity. There must be at least a substantial identity of stockholders for both corporations in order to consider this factor to be constitutive of corporate identity.

It would not avail Morales any to rely[44] on *General Credit Corporation v. Alsons Development and Investment Corporation.*[45] *General Credit Corporation* is factually not on all fours with the instant case. There, the common stockholders of the corporations represented **90%** of the outstanding capital stock of the companies, unlike here where Michael Chan merely represents 40% of the outstanding capital stock of both KIC and Kukan, Inc., not even a majority of it. In that case, moreover, evidence was adduced to support the finding that the funds of the second corporation came from the first. Finally, there was proof in *General Credit Corporation* of complete control, such that one corporation was a mere dummy or alter ego of the other, which is absent in the instant case.

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[43] Sec. 13. *Amount of capital stock to be subscribed and paid for the purposes of incorporation.*––At least twenty-five percent (25%) of the authorized capital stock as stated in the articles of incorporation must be subscribed at the time of incorporation, and at least twenty-five (25%) per cent of the total subscription must be paid upon subscription, the balance to be payable on a date or dates fixed in the contract of subscription without need of call, or in the absence of a fixed date or dates, upon call for payment by the board of directors: Provided, however, **That in no case shall the paid-up capital be less than five thousand (₱5,000.00) pesos.** (Emphasis supplied.)

[44] *Rollo*, p. 305.

[45] G.R. No. 154975, January 29, 2007, 513 SCRA 225.

Evidently, the aforementioned case relied upon by Morales cannot justify the application of the principle of piercing the veil of corporate fiction to the instant case. As shown by the records, the name Michael Chan, the similarity of business activities engaged in, and incidentally the word "Kukan" appearing in the corporate names provide the nexus between Kukan, Inc. and KIC. As illustrated, these circumstances are insufficient to establish the identity of KIC as the alter ego or successor of Kukan, Inc.

It bears reiterating that piercing the veil of corporate fiction is frowned upon. Accordingly, those who seek to pierce the veil must clearly establish that the separate and distinct personalities of the corporations are set up to justify a wrong, protect fraud, or perpetrate a deception. In the concrete and on the assumption that the RTC has validly acquired jurisdiction over the party concerned, Morales ought to have proved by convincing evidence that Kukan, Inc. was collapsed and thereafter KIC purposely formed and operated to defraud him. Morales has not to us discharged his burden.

WHEREFORE, the petition is hereby *GRANTED*. The CA's January 23, 2008 Decision and April 16, 2008 Resolution in CA-G.R. SP No. 100152 are hereby *REVERSED* and *SET ASIDE*. The levy placed upon the personal properties of Kukan International Corporation is hereby ordered lifted and the personal properties ordered returned to Kukan International Corporation. The RTC of Manila, Branch 21 is hereby directed to execute the RTC Decision dated November 28, 2002 against Kukan, Inc. with reasonable dispatch.

No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Carpio,[*] *Leonardo-de Castro,* and *Perez, JJ.,* concur.

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[*] Additional member per September 22, 2010 raffle.

SECOND DIVISION

[G.R. No. 183054. September 29, 2010]

NFD INTERNATIONAL MANNING AGENTS, INC./ BARBER SHIP MANAGEMENT LTD., *petitioners, vs.* **ESMERALDO C. ILLESCAS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARERS; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD CONTRACT FOR SEAFARERS; DISABILITY BENEFITS; ACCIDENT; COMMON DEFINITION.— Black's Law Dictionary defines "accident" as "[a]n unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated, x x x [a]n unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct." The Philippine Law Dictionary defines the word "accident" as "[t]hat which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen." "Accident," in its commonly accepted meaning, or in its ordinary sense, has been defined as: [A] fortuitous circumstance, event, or happening, an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens x x x. **The word may be employed as denoting** a calamity, casualty, catastrophe, disaster, an undesirable or unfortunate happening; **any unexpected personal injury resulting from any unlooked for mishap or occurrence**; any unpleasant or unfortunate occurrence, that causes injury, loss, suffering or death; some untoward occurrence aside from the usual course of events."

2. ID.; ID.; ID.; ID.; ID.; THE SNAP ON THE BACK OF RESPONDENT IS NOT AN ACCIDENT, BUT AN INJURY HE SUSTAINED FROM CARRYING THE HEAVY BASKETFUL OF FIRE HYDRANT CAPS, WHICH INJURY

RESULTED IN HIS DISABILITY.— The Court holds that the snap on the back of respondent was not an accident, but an injury sustained by respondent from carrying the heavy basketful of fire hydrant caps, which injury resulted in his disability. The injury cannot be said to be the result of an accident, that is, an unlooked for mishap, occurrence, or fortuitous event, because the injury resulted from the performance of a duty. Although respondent may not have expected the injury, yet, it is common knowledge that carrying heavy objects can cause back injury, as what happened in this case. Hence, the injury cannot be viewed as unusual under the circumstances, and is not synonymous with the term "accident" as defined above.

3. ID.; ID.; ID.; ID.; ID.; ALTHOUGH THE DISABILITY OF RESPONDENT WAS NOT CAUSED BY AN ACCIDENT, IT IS STILL COMPENSABLE UNDER ARTICLE 13 OF THEIR COLLECTIVE BARGAINING AGREEMENT (CBA).— Although the disability of respondent was not caused by an accident, his disability is still compensable under Article 13 of the CBA under the following provision: A seafarer/ officer who is disabled as a result of any injury, and who is assessed as less than 50% permanently disabled, but permanently unfit for further service at sea in any capacity, shall also be entitled to a 100% compensation. The Court notes that the CBA states that the degree of disability, which the company is liable to pay, shall be determined by a doctor appointed by the company. In this case, the POEA schedule is the basis of the assessment whether a seafarer's permanent disability is 50 percent or more, or less than 50 percent. The Alegre Medical Clinic, petitioners' accredited clinic, found that respondent had a Grade 8 disability (33.59%), described as "moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk." Dr. Almeda, respondent's independent doctor, on the other hand, found respondent to be suffering from Grade 11 disability (14.93%), described as "slight rigidity or one-third (1/3) loss of motion or lifting power of the trunk." In *HFS Philippines, Inc. v. Pilar*, the Court held that a claimant may dispute the company-designated physician's report by seasonably consulting another doctor. In such a case, the medical report issued by the latter shall be evaluated by the labor tribunal and the court based on its inherent merit. In

this case, petitioners never questioned the weight given by the Labor Arbiter and the Court of Appeals to the findings of respondent's independent doctor in regard to the disability of respondent. Dr. Almeda, respondent's independent doctor, and petitioners' accredited medical clinic, both assessed respondent's disability in accordance with the POEA schedule as less than 50% permanently disabled. Moreover, Dr. Almeda, who is a specialist in occupational medicine and orthopedics, found that respondent was unfit to work in any capacity as a seaman.

4. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF, JUSTIFIED; RESPONDENT WAS COMPELLED TO LITIGATE TO BE ENTITLED TO A HIGHER DISABILITY BENEFIT.— In regard to the award of attorney's fees, the Court agrees with the Court of Appeals that respondent is entitled to the same under Article 2208 of the Civil Code. xxx This case involves the propriety of the award of disability compensation under the CBA to respondent, who worked as a seaman in the foreign vessel of petitioner Barber Ship Management Ltd. The award of attorney's fees is justified under Article 2208 (2) of the Civil Code. Even if petitioners did not withhold payment of a smaller disability benefit, respondent was compelled to litigate to be entitled to a higher disability benefit. Moreover, in *HFS Philippines, Inc. v. Pilar* and *Iloreta v. Philippine Transmarine Carriers, Inc.*, the Court sustained the NLRC's award of attorney's fees, in addition to disability benefits to which the concerned seamen-claimants were entitled. It is no different in this case wherein respondent has been awarded disability benefit and attorney's fees by the Labor Arbiter and the Court of Appeals. It is only just that respondent be also entitled to the award of attorney's fees. In *Iloreta v. Philippine Transmarine Carriers, Inc.*, the Court found the amount of US$1,000.00 as reasonable award of attorney's fees.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioners.
Tolentino & Bautista Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Court of Appeals' Decision dated October 23, 2007 in CA-G.R. SP No. 97941, and its Resolution dated May 9, 2008 denying petitioners' motion for reconsideration. The Decision of the Court of Appeals nullified and set aside the decision of the National Labor Relations Commission (NLRC), and ordered petitioners to pay respondent the amount of US$90,000.00 as disability benefit. The Resolution dated May 9, 2008 denied petitioners' motion for reconsideration and awarded respondent attorney's fees.

The facts are as follows:

On September 6, 2002, respondent Esmeraldo C. Illescas entered into a Contract of Employment with petitioner NFD International Manning Agents, Inc., acting for and in behalf of its foreign principal, co-petitioner Barber Ship Management, Ltd. Under the contract, respondent was employed as Third Officer of *M/V* Shinrei for a period of nine months, with a basic monthly salary of US$854.00. The employment contract complied with the Philippine Overseas Employment Administration (POEA) Standard Contract for Seafarers, and the standard terms and conditions governing the employment of Filipino seafarers on board ocean-going vessels under Department Order No. 4, series of 2000.

After respondent passed the pre-employment medical examination, he boarded the vessel and started performing his job on October 6, 2002.

On May 16, 2003, when respondent had been on board the vessel for seven months, Captain Jaspal Singh and Chief Officer Maydeo Rajev ordered respondent to carry 25 fire hydrant caps

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

from the deck to the engine workshop, then back to the deck to refit the caps. The next day, while carrying a heavy basketful of fire hydrant caps, respondent felt a sudden snap on his back, with pain that radiated down to the left side of his hips. He immediately informed the ship captain about his condition, and he was advised to take pain relievers. As the pain was initially tolerable, he continued with his work. After a few days, the pain became severe, and respondent had difficulty walking.

On May 27, 2003, when the vessel was in Japan, respondent was brought to the Higashiogishima Clinic. Respondent was diagnosed to be suffering from lumbago and sprain. The doctor gave respondent medication and advised him to wear a corset, avoid lifting heavy objects and get further examination and treatment if the symptoms persisted.[2]

Despite the lighter work assigned to respondent, he continued to experience excruciating pain. On June 13, 2003, petitioner was referred to a doctor upon arrival of *M/V* Shinrei at the port of Hay Point, Australia. The doctor declared that respondent was unfit to work, and recommended that respondent return home for further management.[3]

On June 14, 2003, respondent was repatriated to the Philippines. On June 17, 2003, respondent was referred to the Alegre Medical Clinic under the care of Dr. Natalio G. Alegre II. Dr. Alegre advised respondent to undergo a lumbo-sacral x-ray, and later a Magnetic Resonance Imaging (MRI) of his lumbo-sacral spine. The MRI revealed multi-level disc dessication, broad-based central and left-sided posterior disc herniation, L4 L5, with severe canal stenosis.[4] Dr. Alegre recommended laminectomy and discectomy.[5]

On August 27, 2003, respondent underwent a laminectomy with discectomy at the St. Luke's Medical Center. He was

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[2] Injury Illness Report, Annex "B", *rollo*, p. 53.

[3] Injury Illness Report, Annex "C", *id.* at 54.

[4] Annex "F", *id.* at 57.

[5] *Id.*

discharged from the hospital on September 6, 2003. Thereafter, he underwent physical rehabilitation. Nevertheless, medical examinations showed that there was still restriction in respondent's truncal mobility and in the lifting power of his trunk.

As his condition did not improve, respondent sought the expertise of Dr. Marciano F. Almeda, Jr., a specialist in occupational medicine and orthopedics, at the Medical Center Muntinlupa for the assessment and evaluation of his health condition and/or disability. Dr. Almeda found that respondent sustained partial permanent disability with an impediment Grade of 11 (14.93%), described as "slight rigidity or one-third loss of motion or lifting power of the trunk" under the POEA Standard Contract for Seafarers.[6] Dr. Almeda declared that respondent was unfit to work at sea in any capacity as a seaman.[7]

On December 29, 2003, petitioners received a letter[8] dated December 16, 2003 from respondent's counsel, demanding the payment of disability benefit. The claim was referred to Pandiman Philippines, Inc., the local correspondent of the P&I Club with which petitioner Barber Ship Management Ltd. was affiliated. In the meantime, respondent filed a Complaint with the Arbitration Branch of the NLRC.

During the preliminary conferences in this case, the parties explored the possibility of settlement. In a letter[9] dated April 12, 2004, Pandiman Philippines, Inc, in behalf of petitioners, offered to pay respondent disability benefit in the amount of US$16,795.00, corresponding to Grade 8 disability under the POEA Standard Contract for Seafarers. Respondent, through counsel, refused the offer on the ground that the injury sustained by him was caused by an accident, which was compensable in the amount of US$90,000.00 under the Collective Bargaining Agreement (CBA), thus:

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[6] CA *rollo*, p. 28.

[7] *Id.*

[8] Annex "I", *rollo*, p. 60.

[9] Annex "J", *id.* at 61.

If a seafarer/officer, due to no fault of his own, suffers permanent disability ***as a result of an accident*** while serving on board or while traveling to or from the vessel on Company's business or due to marine peril, and as a result, his ability to work is permanently reduced, totally or partially, the Company shall pay him a disability compensation which, including the amounts stipulated by the POEA's Rules and Regulations Part II, Section C, shall be maximum of US$70,000 for ratings and US$90,000 for officers.[10]

Since the parties failed to arrive at an agreement, the NLRC directed them to file their Position Papers.

In his Position Paper,[11] respondent submitted that Section 20 (B.6) of the POEA Standard Contract for Seafarers provides:

x x x x x x x x x

In case of permanent total or partial disability of a seafarer during the term of employment caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from the illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

However, respondent stated that he is a member of the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP), which has a CBA with petitioners. Under the CBA, he is entitled to a higher disability benefit in the amount of US$90,000.00, since his injury resulted from an accident while carrying a basketful of heavy fire hydrant caps on board the vessel.[12]

Respondent prayed that petitioners be ordered to pay him disability benefit in the amount of US$90,000.00, illness allowance equivalent to 120 days, as well as moral and exemplary damages, and attorney's fees.

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[10] Emphasis supplied.

[11] *Rollo*, pp. 65-73.

[12] Position Paper of Complainant, *id.*

In their Position Paper,[13] petitioners countered that it is the POEA Standard Contract for Seafarers, and not the CBA, that governs this case. They stated that Black's Law Dictionary defined "accident" as an unusual, fortuitous, unexpected, unforeseen or unlooked for event. They argued that respondent's disability was not the result of an accident, as respondent was merely performing his normal duty of transporting fire hydrant caps from the deck to the engine workshop, then back to the deck to refit the caps. During the performance thereof, no unusual, unforeseen and unexpected event transpired as proved by the absence of any accident report. Moreover, respondent's Affidavit did not mention the occurrence of any accident which gave rise to his injury. Petitioners argued that, since no accident took place, the disability benefits under the CBA do not apply to this case.

Petitioners further averred that based on the assessment of its accredited-clinic, the Alegre Medical Clinic, respondent suffered from Grade 8 disability, described as "moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk." During the preliminary conference, they offered to pay respondent disability benefit in the amount of US$16,795.00 for the Grade 8 disability under Section 32 of the POEA Standard Contract for Seafarers.[14]

The main issue for resolution before the Labor Arbiter was whether the disability of complainant (respondent) was

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

[14] SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

x x x x x x x x x

CHEST-TRUNK-SPINE

1. Fracture of four (4) more ribs resulting to severe limitation of chest expansion Gr. 6

x x x x x x x x x

5. Moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk Gr. 8

x x x x x x x x x

compensable under the provision of Article 13 of the CBA in the amount of US$90,000.00.

On January 6, 2005, the Labor Arbiter rendered a Decision[15] finding respondent entitled to disability benefit under the CBA in the amount of US$90,000.00 as 100% compensation; US$3,456.00 (US$864 x 4) as sickness allowance equivalent to 120 days; and US$9,345.60 as attorney's fees, or a total of US$102,801.60. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents NFD International Manning Agents, Inc. and Barber Ship Management Ltd. to jointly and severally pay complainant Esmeraldo C. Illescas the amount of ONE HUNDRED TWO THOUSAND EIGHT HUNDRED ONE US DOLLARS & 60/100 (US$102,801.60) in its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability benefits, sickness wages and attorney's fees.
>
> All other claims are DlSMISSED for lack of merit.[16]

The Labor Arbiter held that the injury suffered by respondent was the result of an accident arising out of, and in the course of, his employment while carrying the heavy fire hydrant caps, and that his injury was unexpected and unforeseen by him.

Moreover, the Labor Arbiter stated that respondent was declared unfit to work by the physician who treated him in Australia, which was confirmed by Dr. Marciano Almeda, Jr. of the Medical Center in Muntinlupa when he declared complainant "unfit to work back at sea in any capacity as a Seaman." The Labor Arbiter also noted that both Dr. Natalio Alegre, the company physician, and Dr. Marciano Almeda, Jr., respondent's independent doctor, assessed respondent's disability as "partial and permanent disability." Hence, the Labor Arbiter held that respondent's disability was 100% compensable under the CBA in the amount of US$90,000.00, and not merely under the Standard Crew Contract.

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[15] *Rollo*, pp. 111-118.

[16] *Id.* at 118.

Petitioners appealed the Labor Arbiter's decision to the NLRC.

In a Decision[17] dated July 13, 2006, the NLRC modified the decision of the Labor Arbiter, as it awarded respondent disability benefit under Section 32 of the POEA Standard Contract for Seafarers.[18] The dispositive portion of the NLRC Decision reads:

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[17] *Id.* at 149-163.

[18] Sec. 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

x x x x x x x x x

CHEST-TRUNK -SPINE

1. Fracture of four (4) or more ribs resulting to severe limitation of chest expansion - Gr. 6
2. Fracture of four (4) or more ribs with intercostal neuralgia resulting in moderate limitation of chest expansion - Gr. 9
3. Slight limitation of chest expansion due to simple rib functional without myositis or intercostal neuralgia - Gr. 12
4. Fracture of the dorsal or lumbar spines resulting to severe or total rigidity of the trunk or total loss of lifting power of heavy objects - Gr. 6
5. Moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk - Gr. 8
6. Slight rigidity or one-third (1/3) loss of motion or lifting power of the trunk - Gr. 11
7. Injury to the spinal cord as to make walking impossible without the aid of a pair of crutches - Gr. 4
8. Injury to the spinal cord as to make walking impossible even with the aid of a pair of crutches - Gr. 1
9. Injury to the spinal cord resulting to incontinence of urine and feces - Gr. 1

x x x x x x x x x

NOTE: Any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability.

Sec. 32-A. SCHEDULE OF DISABILITY ALLOWANCES

Impediment Grade		Impediment
1	Maximum Rate x	120.00%
2	Maximum Rate x	88.81%
3	Maximum Rate x	78.36%
4	Maximum Rate x	68.66%
5	Maximum Rate x	58.96%
6	Maximum Rate x	50.00%
7	Maximum Rate x	41.80%
8	Maximum Rate x	33.59%

WHEREFORE, premises considered, the assailed decision is hereby modified by deleting the award of US$102,801.60 and instead ordering respondent NFD International Manning Agents, Inc. and Barber Ship Management Ltd. to jointly and severally pay complainant Esmeraldo C. Illescas the amount of Sixteen Thousand Seven Hundred Ninety-Five US Dollars (US$16,795.00) at the prevailing rate of exchange at the time of actual payment representing his disability benefit.[19]

The NLRC held that the injury sustained by respondent was not the result of an accident, although it arose out of his work. It stated that the task of carrying hydrant caps was not a fortuitous, unusual or unforeseen event, or a marine peril. According to the NLRC, back pains or chest-trunk-spine injuries are inherent in the job of carrying heavy objects, and the injury may occur over a period of time or on the spot depending upon the physical strength and posture of the workers.

The NLRC deleted the award for sickness allowance based on the letter dated June 9, 2004 of petitioner NFD International Manning Agents, Inc. to Pandiman Philippines, Inc. The letter stated that respondent's illness allowance from June 15, 2003 to October 14, 2003 (120 days) had already been processed and remitted to respondent's bank account. The NLRC held that the payment of the sickness allowance may be presumed, since respondent did not dispute the letter.

The NLRC also deleted the attorney's fees awarded to respondent on the ground that there was no unlawful withholding of payment of benefits in view of petitioners' compromise offer

9	Maximum Rate x	26.12%
10	Maximum Rate x	20.15%
11	Maximum Rate x	14.93%
12	Maximum Rate x	10.45%
13	Maximum Rate x	6.72%
14	Maximum Rate x	3.74%
	Maximum Rate: US$50,000	

To be paid in Philippine Currency equivalent at the exchange rate prevailing during the time of payment.

[19] *Rollo*, p. 162.

of US$16,795.00, which was the amount of disability benefit awarded by the NLRC to respondent.

Respondent's motion for reconsideration[20] was denied by the NLRC for lack of merit in a Resolution[21] dated December 7, 2006.

Respondent filed a special civil action for *certiorari* with the Court of Appeals, alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that his injury was not the result of an accident on board the vessel; in not applying the pertinent provisions of the CBA; and in deleting the award of attorney's fees.

On October 23, 2007, the Court of Appeals rendered a Decision[22] in favor of respondent. The dispositive portion of the Decision states:

> WHEREFORE**,** finding merit in the petition, We hereby GRANT the same. The assailed Decision and Resolution of the NLRC are NULLIFIED and SET ASIDE. Private respondents are ORDERED to pay petitioner the amount of US$90,000.00 as disability benefits.[23]

The Court of Appeals, citing *Jarco Marketing v. Court of Appeals*,[24] held that respondent's disability resulted from an accident as the injury was unforeseen and happened without any fault on his part.

The appellate court declared that the Labor Arbiter correctly applied Article 13 of the CBA[25] in awarding respondent disability

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[20] CA *rollo*, p. 161.

[21] *Rollo*, pp. 199-200.

[22] *Id.* at 22-34.

[23] *Id.* at 33.

[24] 378 Phil. 991 (1999).

[25] If a seafarer/officer, due to no fault of his own, suffers permanent disability as a result of an accident while serving on board or while traveling to or from the vessel on Company's business or due to marine peril, and as a result, his ability to work is permanently reduced, totally or partially, the

benefit in the amount of US$90,000.00. It ruled that the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in disregarding the CBA.

Petitioners and respondent filed separate motions for reconsideration. Petitioners contended that the absence of an accident report negated the appellate court's finding that the injury suffered by respondent was the result of an accident arising out of, and in the course of, his employment. Respondent's motion for partial reconsideration sought an additional award of attorney's fees equivalent to 10% of the total monetary award.

In a Resolution dated May 9, 2008, the Court of Appeals denied the motion for reconsideration of petitioners, but granted the motion for partial reconsideration of respondent. The dispositive portion of the Resolution reads:

> WHEREFORE, finding merit in the Motion for Partial Reconsideration filed by petitioner, the same is hereby GRANTED. The Decision dated October 23, 2007 is MODIFIED in that private respondents are further ordered to pay TEN PERCENT (10%) of the total monetary award as attorney's fees.
>
> The motion for reconsideration filed by private respondents is DENIED.
>
> SO ORDERED.[26]

The Court of Appeals justified the award of attorney's fees under Article 111[27] of the Labor Code and Article 2208[28] of the

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Company shall pay him a disability compensation which including the amounts stipulated by the POEA's Rules and Regulations Part II, Section C, shall be maximum of US$70,000 for ratings and US$90,000 for officers.

[26] *Rollo,* p. 36.

[27] Art. 111. *Attorney's fees*. — (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of the wages, attorney's fees, which exceed ten percent of the amount of wages recovered.

[28] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

Civil Code, as respondent was forced to litigate and has incurred expenses to protect his right and interest.

Petitioners filed this petition raising the following issues:

I.

THE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT RESPONDENT'S MEDICAL CONDITION WAS A RESULT OF AN ACCIDENT DURING THE TERM OF HIS EMPLOYMENT WITH PETITIONERS, AND HENCE, COVERED BY THE PROVISIONS OF THE CBA.

II.

THE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT ORDERED THE PAYMENT OF ATTORNEY'S FEES TO RESPONDENT.[29]

The issues raised before this Court are: (1) whether or not the disability suffered by respondent was caused by an accident; (2) whether or not the disability is compensable under the CBA; and (3) whether or not respondent is entitled to attorney's fees.

Petitioners contend that respondent did not suffer a disability as a result of an "accident" as defined under existing laws or jurisprudence. They argue that *Jarco Marketing v. Court of Appeals*,[30] the case citied by the Court of Appeals to support its decision, defined an "accident" as:

x x x an unforeseen event in which no fault or negligence attaches to the defendant. It is "a fortuitous circumstance, event or happening; an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual or unexpected by the person to whom it happens."

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x x x x x x x x x

(2) when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest; x x x.

[29] *Rollo*, p. 11.

[30] *Supra* note 24, at 1002.

Petitioners point out that the above definition of the word "accident," subscribed to by the Court of Appeals, explicitly states that it pertains to a *fortuitous circumstance, event or happening*.[31] Petitioners cited *Lasam v. Smith*,[32] which defined "fortuitous event" as "an unexpected event or act of God which could neither be foreseen or resisted, such as floods, torrents, shipwrecks, conflagrations, lightning, compulsion, insurrections, destruction of buildings by unforeseen accidents and other occurrences of similar nature." Petitioners contend that the term "accident," as contemplated by the subject CBA provision, refers to a separate event or incident which gives rise to the injury of the seafarer.

Petitioners argue that in this case, no such unusual, fortuitous, unexpected or unforeseen event took place or was reported. Respondent merely went about his normal duties when he transported fire hydrant caps from the deck to the engine workshop, then back to the deck to refit the caps. The sudden snap respondent felt on his back while carrying the fire hydrant caps cannot, by itself, qualify as an accident.

Hence, petitioners assert that respondent is not entitled to the benefits provided under the CBA. They add that if the ruling of the Court of Appeals would be sustained, it would open the floodgates for absurd claims for double or higher indemnity, especially in insurance cases, considering that an employee who suffers a stroke, congenital heart failure, or even appendicitis, while at work, would now be considered as resulting from an accident, since the same may be regarded as an unusual and unexpected occurrence which happened without the employee's fault.

Petitioners also contend that there is no basis for the award of attorney's fees, as they did not act in gross and evident bad faith. They merely acted in the interest of what was just and right, since respondent was not entitled to full disability benefit under the CBA.

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[31] Emphasis supplied.

[32] 45 Phil. 657 (1924).

The petition is denied.

The provisions of the CBA, which are relevant to this case, are as follows:

Art. 13 (Compensation for Death and Disability)

If a seafarer/officer, due to no fault of his own, suffers permanent disability *as a result of an accident* while serving on board or while traveling to or from the vessel on Company's business *or due to marine peril*, and as a result, his ability to work is permanently reduced, totally or partially, the Company shall pay him a disability compensation which including the amounts stipulated by the POEA's Rules and Regulations Part II, Section C, shall be maximum of US$70,000.00 for ratings and US$90,000.00 for officers.

The degree of disability, which the Company, subject to this Agreement, is liable to pay, shall be determined by a doctor appointed by the Company. If a doctor appointed by the Seafarer and his Union disagrees with the assessment, a third doctor may be agreed jointly between the Company and the seafarer and his/her Union, and third doctor's decision shall be final and binding on both parties.

A seafarer who is disabled as a result of an injury, and whose permanent disability in accordance with the POEA schedule is assessed at 50% or more shall, for the purpose of this paragraph, be regarded as permanently disabled and be entitled to 100% compensation (USD90,000 for officers and USD70,000 for ratings).

A seafarer/officer who is disabled as a result of any injury, and who is assessed as less than 50% permanently disabled, but permanently unfit for further service at sea in any capacity, shall also be entitled to a 100% compensation.

x x x x x x x x x

The applicable disability compensation shall be in accordance with the degree of disability and rate of compensation indicated in the table hereunder, to wit:

DEGREE OF DISABILITY	RATE OF COMPENSATION	
%	RATINGS	OFFICERS
		US$
100	70,000	90,000
75	52,500	67,500
60	42,000	54,000

x x x x x x x x x

Any payment effected under any section of this article shall be without prejudice to any claim for compensation made in law, but such payments shall be deducted from any award of damages.[33]

Was respondent's disability the result of an accident?

Black's Law Dictionary[34] defines "accident" as "[a]n unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated, x x x [a]n unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct."

The Philippine Law Dictionary[35] defines the word "accident" as "[t]hat which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen."

"Accident," in its commonly accepted meaning, or in its ordinary sense, has been defined as:

> [A] fortuitous circumstance, event, or happening, an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens x x x.
>
> **The word may be employed as denoting** a calamity, casualty, catastrophe, disaster, an undesirable or unfortunate happening; **any unexpected personal injury resulting from any unlooked for mishap or occurrence**; any unpleasant or unfortunate occurrence, that causes injury, loss, suffering or death; some untoward occurrence aside from the usual course of events."[36]

The Court holds that the snap on the back of respondent was not an accident, but an injury sustained by respondent from carrying the heavy basketful of fire hydrant caps, which

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[33] *Rollo*, pp. 359-360. (Emphasis supplied.)

[34] Eighth edition, © 2004.

[35] F.B. Moreno, Third Edition, ©1988.

[36] 1 *Corpus Juris Secundum*, pp. 427, 431. (Emphasis supplied.)

injury resulted in his disability. The injury cannot be said to be the result of an accident, that is, an unlooked for mishap, occurrence, or fortuitous event, because the injury resulted from the performance of a duty. Although respondent may not have expected the injury, yet, it is common knowledge that carrying heavy objects can cause back injury, as what happened in this case. Hence, the injury cannot be viewed as unusual under the circumstances, and is not synonymous with the term "accident" as defined above.

Although the disability of respondent was not caused by an accident, his disability is still compensable under Article 13 of the CBA under the following provision:

> A seafarer/officer who is disabled as a result of any injury, and who is assessed as less than 50% permanently disabled, but permanently unfit for further service at sea in any capacity, shall also be entitled to a 100% compensation.

The Court notes that the CBA states that the degree of disability, which the company is liable to pay, shall be determined by a doctor appointed by the company. In this case, the POEA schedule is the basis of the assessment whether a seafarer's permanent disability is 50 percent or more, or less than 50 percent.[37] The Alegre Medical Clinic, petitioners' accredited clinic, found that respondent had a Grade 8 disability (33.59%), described as "moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk." Dr. Almeda, respondent's

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[37] CBA, Art. 13 (Compensation for Death and Disability)

x x x x x x x x x

A seafarer who is disabled as a result of an injury, **and whose permanent disability in accordance with the POEA schedule is assessed at 50% or more** shall, for the purpose of this paragraph, be regarded as permanently disabled and be entitled to 100% compensation (USD90,000 for officers and USD70,000 for ratings).

A seafarer/officer who is disabled as a result of any injury, and who is assessed as less than 50% permanently disabled, but permanently unfit for further service at sea in any capacity, shall also be entitled to a 100% compensation. (Emphasis supplied.)

independent doctor, on the other hand, found respondent to be suffering from Grade 11 disability (14.93%), described as "slight rigidity or one-third (1/3) loss of motion or lifting power of the trunk."

In *HFS Philippines, Inc. v. Pilar*,[38] the Court held that a claimant may dispute the company-designated physician's report by seasonably consulting another doctor. In such a case, the medical report issued by the latter shall be evaluated by the labor tribunal and the court based on its inherent merit.[39] In this case, petitioners never questioned the weight given by the Labor Arbiter and the Court of Appeals to the findings of respondent's independent doctor in regard to the disability of respondent.

Dr. Almeda, respondent's independent doctor, and petitioners' accredited medical clinic, both assessed respondent's disability in accordance with the POEA schedule as less than 50% permanently disabled. Moreover, Dr. Almeda, who is a specialist in occupational medicine and orthopedics, found that respondent was unfit to work in any capacity as a seaman. The Medical Report[40] of Dr. Almeda states:

x x x x x x x x x

He is now three months post surgery, but still, Mr. Illescas continue to have back pain. There is still on and off pain and numbness on his left thigh. He is also unable to tolerate prolonged standing and walking. With his present complaints, Mr. Illescas cannot withstand the demands of his previous work at sea. Doing so could aggravate his existing back problem. I therefore recommend a **partial permanent disability** with **Grade 11 Impediment** based on the POEA Contract.

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[38] G.R. No. 168716, April 16, 2009, 585 SCRA 315.

[39] *Id.* at 326.

[40] Annexes "E-1" to "E-2", *rollo*, pp. 82-83.

Justification of Impediment:
Grade 11 (14.93%)
Slight rigidity or one-third (1/3) loss of motion or lifting power of the trunk.

Mr. Illescas started having back problems in a workplace incident where he lifted a basketful of hydrant caps. He underwent surgery which he claimed as afforded him partial relief initially. However, up to the present time, the residual symptoms continue to bother him. This has restricted him in the active performance of certain tasks.

Often, symptoms following surgery are relieved only to recur after a variable period. The causes may include insufficient removal of disc material and further extrusion, rupture of another disc, adhesions about the nerve root and formation of an osteophyte at the site of removal of bone. Even a successful disc removal, therefore, does not guarantee a permanent cure as fibrosis can produce a dense constricting scar tissue, which is presumed to be a prime cause of recurrent symptoms.

Diagnostic imaging studies, although important, is but a single facet of the overall evaluation of patients with suspected disc herniation or spinal stenosis, which must include thorough history taking and physical examination. It is not surprising to encounter some variation between the neurologic symptoms and the result of the patient's imaging studies. Each individual has a different spinal canal diameter. While a mild herniation may not produce any symptom at all in one person, it may be significant in one with a narrow spinal canal.

Surgery can never stop the pathological process nor restore the back to its previous state. Similar poor results have been found with repeated attempts at surgical intervention for the relief of chronic low back pain. If long term relief is desired, continued mechanical stress of postural or occupational type must be avoided. Resuming his usual work, which includes increased loading, twisting, or bending and extension of the back, will further expose Mr. lllescas to dangers of enhancing his discomfort even more.

It is for this reason that I find him UNFIT to work back at sea in any capacity as a Seaman.[41]

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[41] *Id.* (Emphasis supplied.)

The Court finds merit in the reasons stated by Dr. Almeda in his Medical Report for declaring respondent unfit to work in any capacity as a seaman. Respondent is, therefore, entitled to disability benefit in the amount of US$90,000.00 under the CBA, thus:

> A seafarer/officer who is disabled as a result of any injury, and who is assessed as less than 50% permanently disabled, but permanently unfit for further service at sea in any capacity, shall also be entitled to a 100% compensation.
>
> x x x x x x x x x
>
> The applicable disability compensation shall be in accordance with the degree of disability and rate of compensation indicated in the table hereunder, to wit:

DEGREE OF DISABILITY %	RATE OF COMPENSATION RATINGS	OFFICERS US$
100	70,000	90,000
75	52,500	67,500
60	42,000	54,000

> x x x x x x x x x

In regard to the award of attorney's fees, the Court agrees with the Court of Appeals that respondent is entitled to the same under Article 2208 of the Civil Code:

> Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> x x x x x x x x x
>
> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
>
> x x x x x x x x x
>
> (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

This case involves the propriety of the award of disability compensation under the CBA to respondent, who worked as a

seaman in the foreign vessel of petitioner Barber Ship Management Ltd. The award of attorney's fees is justified under Article 2208 (2) of the Civil Code. Even if petitioners did not withhold payment of a smaller disability benefit, respondent was compelled to litigate to be entitled to a higher disability benefit. Moreover, in *HFS Philippines, Inc. v. Pilar*[42] and *Iloreta v. Philippine Transmarine Carriers, Inc.*,[43] the Court sustained the NLRC's award of attorney's fees, in addition to disability benefits to which the concerned seamen-claimants were entitled. It is no different in this case wherein respondent has been awarded disability benefit and attorney's fees by the Labor Arbiter and the Court of Appeals. It is only just that respondent be also entitled to the award of attorney's fees. In *Iloreta v. Philippine Transmarine Carriers, Inc.*,[44] the Court found the amount of US$1,000.00 as reasonable award of attorney's fees.

WHEREFORE, the petition is *DENIED*. The Court of Appeals' Decision dated October 23, 2007 in CA-G.R. SP No. 97941, and its Resolution dated May 9, 2008 are *AFFIRMED* insofar as respondent is awarded disability benefit in the amount of US$90,000.00, as well as attorney's fees, which is reduced to US$1,000.00. Petitioners NFD International Manning Agents, Inc. and Barber Ship Management Ltd. are hereby *ORDERED* to jointly and severally pay respondent Esmeraldo C. Illescas disability benefit in the amount of *NINETY THOUSAND DOLLARS* (US$90,000.00) and attorney's fees in the amount of *ONE THOUSAND DOLLARS* (US$1,000.00) in its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment.

Costs against petitioners.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.*, concur.

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[42] *Supra* note 37.

[43] G.R. No. 183908, December 4, 2009, 607 SCRA 796.

[44] *Id.* at 806.

THIRD DIVISION

[G.R. No. 185708. September 29, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JUANITO CABIGQUEZ *y* ALASTRA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; CLEARLY ESTABLISHED BY TESTIMONIAL AND DOCUMENTARY EVIDENCE.— The factual findings of the RTC, as affirmed by the appellate court, indubitably prove that appellant raped AAA even if the specimen obtained from the vaginal swabs and submitted to the NBI failed to match appellant's DNA profile. Rape is committed by a man who shall have carnal knowledge of a woman through force, threat or intimidation. The commission of rape was clearly shown by testimonial and documentary evidence; the defense submits that it is the identity of the perpetrator which is not duly established.

2. ID.; ID.; RESULT OF DNA TEST IS INCONCLUSIVE TO EXCULPATE OR INCULPATE APPELLANT IN CASE AT BAR; TOTALITY OF EVIDENCE SATISFACTORILY ESTABLISHED THAT IT WAS APPELLANT WHO RAPED THE COMPLAINANT.— For purposes of criminal investigation, DNA identification is indeed a fertile source of both inculpatory and exculpatory evidence. In this case, however, the result of the DNA test is rendered inconclusive to exculpate or inculpate the appellant since the sample tested by the NBI merely contained vaginal discharges. In the laboratory test earlier conducted by Dr. Villapañe on the vaginal swab obtained from AAA's genitalia, the presence of spermatozoa was confirmed. This notwithstanding, the totality of evidence satisfactorily established that it was indeed appellant who raped AAA.

3. ID.; ID.; A POSITIVE DNA MATCH MAY STRENGTHEN THE EVIDENCE FOR THE PROSECUTION, BUT AN INCONCLUSIVE DNA TEST RESULT MAY NOT BE SUFFICIENT TO EXCULPATE THE ACCUSED, PARTICULARLY WHEN THERE IS SUFFICIENT

EVIDENCE PROVING HIS GUILT.— A positive DNA match is unnecessary when the totality of the evidence presented before the court points to no other possible conclusion, *i.e.*, appellant raped the private offended party. A positive DNA match may strengthen the evidence for the prosecution, but an inconclusive DNA test result may not be sufficient to exculpate the accused, particularly when there is sufficient evidence proving his guilt. Notably, neither a positive DNA match of the semen nor the presence of spermatozoa is essential in finding that rape was committed. The important consideration in rape cases is not the emission of semen but the penetration of the female genitalia by the male organ.

4. ID.; ID.; COMMISSION OF THE RAPE IN THE PRESENCE AND IN THE FULL VIEW OF THE VICTIM'S CHILDREN QUALIFIED THE RAPE.— It is evident that the rape of AAA was committed in the presence and in full view of her three minor children. Thirteen (13)-year old BBB, as well as her two minor siblings who were present at the time when the rape was committed, was already old enough to sense the bestiality being committed against their own mother. Such circumstance, as recited in the last portion of the Information for Criminal Case No. 2001-815 is, by itself, sufficient to qualify the rape under Article 266-B of the Revised Penal Code, as amended. Consequently, the CA was correct in affirming the conviction of appellant for qualified rape.

5. ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; SUFFICIENTLY PROVEN BY CIRCUMSTANTIAL EVIDENCE.— With respect to the charge of robbery, we find no merit in appellant's argument that the prosecution failed to establish that he conspired with co-accused Grondiano in stealing goods from private complainant's store. He asserts that there was no proof that he was outside the store when the crime of robbery was being committed; private complainant and her daughter merely surmised that another person was outside the store because of a creaking sound created by a bamboo chair, but they actually did not see that person or if there was indeed that person. On this issue, we hold that the CA correctly ruled that conspiracy was sufficiently proven by circumstantial evidence on record.

6. ID.; CIVIL LIABILITY; ACTUAL DAMAGES; AMOUNT AWARDED BY TRIAL COURT, SUSTAINED; TRIAL

COURTS HAVE THE POWER TO TAKE JUDICIAL NOTICE OF THE VALUE OF STOLEN GOODS BECAUSE THESE ARE MATTERS OF PUBLIC KNOWLEDGE OR CAPABLE OF UNQUESTIONABLE DEMONSTRATION.— We find no reversible error committed by the CA in sustaining such award. In *People v. Martinez*, this Court ruled that the trial court has the power to take judicial notice of the value of stolen goods because these are matters of public knowledge or capable of unquestionable demonstration. Judicial cognizance, which is based on considerations of expediency and convenience, displace evidence since, being equivalent to proof, it fulfills the object which the evidence is intended to achieve. Surely, matters like the value of the appliances, canned goods and perfume are undeniably within public knowledge and easily capable of unquestionable demonstration. Here, what is involved are common goods for everyday use and ordinary stocks found in small *sari-sari* stores like private complainant's store, *i.e.*, milk, soap, coffee, sugar, liquor and cigarettes. The RTC was thus correct in granting the reasonable amount of ₱10,000.00 as computed by the private complainant representing the value of stolen merchandise from her store.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE UNFLINCHING AND CONSISTENT TESTIMONY OF EYEWITNESS TAKEN TOGETHER WITH THE MEDICAL FINDINGS AND THE VICTIM'S OWN DECLARATION IN COURT PROVIDES SUFFICIENT BASIS FOR CONVICTION OF APPELLANT.— AAA's daughter, BBB, who witnessed the entire incident which happened inside their store on the night in question, positively identified appellant as the one who raped her mother against the latter's will by threatening her and her children with a handgun he was then carrying. BBB's unflinching and consistent testimony, when taken together with Dr. Villapañe's findings and AAA's own declarations in court, provides sufficient basis for the conviction of appellant for rape.

8. ID.; ID.; ID.; THE VICTIM CANNOT BE FAULTED FOR FAILING TO RECOGNIZE APPELLANT AS HER RAPIST THOUGH THE LATTER WAS THEIR NEIGHBOR.— While it is true that the most natural reaction for victims of crimes is to strive to remember the faces of their assailants and the manner in which the craven acts are committed, in this case,

AAA cannot be faulted for failing to recognize appellant as her rapist though the latter was their neighbor. It must be recalled, as narrated by AAA and BBB, they were all still lying face down when appellant suddenly entered the store right after his co-accused Grondiano exited through the balcony taking the loot with him. BBB recounted that her mother was still lying face down when appellant removed her mother's short pants and panty, placed a pillow below her abdomen and then proceeded to rape her. It was BBB who had the opportunity to look at this second person who entered their house because she looked back at the door thinking that Grondiano (the one who first entered the store) already left, but then appellant immediately came in after Grondiano. Although AAA was able to shout at that time, she could not move because she was afraid that her three children, who were already crying, will be harmed.

9. ID.; ID.; ID.; DELAY IN REVEALING THE IDENTITY OF A PERPETRATOR OF A FELONY DOES NOT AFFECT, MUCH LESS IMPAIR CREDIBILITY IF THE CAUSE FOR THE DELAY IS ADEQUATELY EXPLAINED.— Neither would BBB's delay in revealing the identities of the perpetrators to the police taint her identification of appellant as the one who raped her mother and conspirator of Grondiano in robbing their store. Failure to immediately reveal the identity of a perpetrator of a felony does not affect, much less impair, the credibility of witnesses, more so if such delay is adequately explained. BBB sufficiently explained her action in not immediately divulging to her mother and brother nor reporting to the police whom she saw inside their house that early morning of March 27, 2001. She was afraid that the assailants would make good their threat that they will return and kill their family if they reported the incident to anybody. But when a couple of months later appellant and his co-accused Grondiano were arrested on drug charges, BBB finally felt it was safe to come out in the open and inform the police of the identities of the two men who robbed their house, one of whom subsequently raped her mother (appellant).

APPEARANCES OF COUNSEL

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

D E C I S I O N

VILLARAMA, JR., *J.*:

On appeal is the Decision[1] dated July 9, 2008 of the Court of Appeals (CA), Mindanao Station, which affirmed the Decision[2] dated October 29, 2003 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 18 finding appellant Juanito Cabigquez *y* Alastra (Cabigquez) and Romulo Grondiano *y* Soco (Grondiano) guilty beyond reasonable doubt of robbery (Criminal Case No. 2001-816), and also convicting appellant Cabigquez of rape (Criminal Case No. 2001-815), both crimes committed against private complainant AAA,[3] a 43-year old widow and mother of ten (10) children. Grondiano decided to withdraw his appeal before the appellate court.[4] Hence, this review shall consider only Cabigquez's appeal.

Below are the facts, as culled from the records of both the trial and appellate courts.

In the evening of March 26, 2001, AAA and her three minor children — BBB, CCC, and DDD[5] — slept inside AAA's small *sari-sari* store which was annexed through the exterior balcony of her house at Purok 1-A, Tablon in Cagayan de Oro City. AAA's head was close to the door, while a cabinet stood at her

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[1] *Rollo*, pp. 5-19. Docketed as CA-G.R. CR-HC No. 00409, penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Edgardo A. Camello and Michael P. Elbinias concurring.

[2] CA *rollo*, pp. 34-51. Penned by Judge Edgardo T. Lloren.

[3] Pursuant to the Court's ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, and Section 44 of Republic Act No. 9262 otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" the real names and personal circumstances of the victims as well as any other information tending to establish or compromise their identities or those of their immediate family or household members are withheld. Fictitious initials and appellations are used instead to represent them.

[4] CA *rollo*, pp. 201-204.

[5] *Supra* note 3.

right side. She left the 50-watt incandescent bulb on as they slept through the night.[6]

At around 3:30 a.m., March 27, 2001, AAA was awakened when clothes fell on her face. When she looked up, she saw a man whose face was covered with a handkerchief and wearing a camouflage jacket and cycling shorts. He immediately poked a gun at her. AAA shouted "*Ayyy!*," rousing her three children from sleep.[7] Despite the cover on the burglar's face, BBB was able to identify him as Romulo Grondiano, one of their neighbors, based on the hanging mole located below his left eye.[8] Armed with a stainless handgun,[9] Grondiano ordered AAA and her children to lie face down.[10] Though stricken with fear, BBB noticed that Grondiano had a companion who stayed at the balcony keeping watch.[11] Grondiano then ransacked the store, taking with him ₱3,000.00 cash from the cabinet and ₱7,000.00 worth of grocery items. Before he left, Grondiano pointed the gun at AAA's back and warned them not to make any noise.[12]

As soon as Grondiano left the store, the other man entered. BBB identified the man as appellant Juanito Cabigquez as the latter did not conceal his face. Armed with Grondiano's gun, Cabigquez stripped AAA of her short pants and underwear, placed a pillow on her lower abdomen and mounted her from behind. He lifted and twisted one of her legs and pinned the other. AAA shouted "*Ayaw*!" (No!), but offered no further resistance. Cabigquez inserted his penis into AAA's vagina, and proceeded to ravish her in full view of her children, and even as the latter cried for mercy. Before he left, Cabigquez threatened

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[6] TSN, [AAA], January 8, 2002, pp. 6-8; TSN, January 9, 2002, pp. 3-4, 28-29.

[7] *Id.* at 7-8; TSN, October 29, 2001, p. 21.

[8] TSN, October 29, 2001, p. 10.

[9] *Id.*; TSN, [AAA], January 8, 2002, p. 8.

[10] *Id.* at 11; *id.*

[11] *Id.*; *id.* at 10.

[12] *Id.* at 12-13; *id.* at 9-11.

to kill AAA and her children if they would tell anyone about the incident.[13]

Afraid for their lives, AAA and her children remained prostrate on the floor even after the two malefactors had left. Shortly thereafter, they decided to proceed to the house of AAA's older son, EEE, and asked for help. AAA failed to disclose to her son the identities of the two men. Meanwhile, BBB, fearing retaliation from the two men, decided not to divulge the identities of Cabigquez and Grondiano to her mother and brother.[14]

That same morning, March 27, 2001, AAA reported the incident to the Puerto Police Station. No criminal complaint, however, was filed since AAA was still uncertain of the identities of the two men. AAA was physically examined by Dr. Cristilda O. Villapañe and Dr. Riman Ricardo, resident physicians at the Northern Mindanao Medical Center.[15] Dr. Villapañe's examination revealed that the smear recovered from AAA's vagina was positive for spermatozoa,[16] while Dr. Ricardo found a two-centimeter contusion on AAA's left hand dorsum.[17]

On May 24, 2001, Cabigquez was arrested for possession of illegal drugs.[18] Grondiano was likewise arrested on May 26, 2001 also for possession of illegal drugs.[19] With the two men incarcerated, and now certain of their safety, BBB finally mustered the courage to reveal the identities of Cabigquez and Grondiano to her mother.[20]

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[13] TSN, [AAA], January 8, 2002, pp. 11-13; TSN, January 9, 2002, pp. 3-4, 20; TSN, October 29, 2001, pp. 15-18.

[14] TSN, January 9, 2002, pp. 4-6; TSN, October 29, 2001, p. 20; TSN, November 28, 2001, p. 32.

[15] *Id.* at 7-9; records, Vol. II, p. 12.

[16] TSN, November 27, 2001, p. 13; *id.*

[17] *Id.* at 25-26; *id.*

[18] CA *rollo*, pp. 102-103; see records, Vol. IV, p. 46.

[19] *Id.* at 103; records, Vol. I, p. 118.

[20] TSN, November 28, 2001, p. 32.

On July 18, 2001, two Informations were filed against Cabigquez and Grondiano, *viz:*

Criminal Case No. 2001-816 (For: Robbery)

The undersigned Assistant City Prosecutor accuses JUANITO CABIGQUEZ *y* ALASTRA, *alias* "DODOY," and ROMULO GRONDIANO *y* SOCO, *alias* "Molok," of the crime they committed, as follows:

> That on March 27, 2001, at more or less 3:30 o'clock in the early morning in a store located at Purok 1-A, Barangay Tablon, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping with one another, with intent to gain and violence or intimidation of persons, did then and there wil[l]fully, unlawfully and feloniously take, rob and carry away cash – Php3,000.00 and assorted [grocery] stocks valued Php7,000.00 all in all amounting to Php10,000.00, owned by and belonging to one [AAA], in the following manner: that accused Romulo Grondiano intimidated the offended party with a gun pointed to her and her three children and ordered them to lay on the floor with face down and then took, robbed and carried away the aforementioned valuable personal things while Juanito Cabigquez *y* Alastra acting/serving as lookout at the door of the store, to the damage and prejudice of the offended party, in the total sum of Php10,000.00, Philippine Currency.

Contrary to and in violation to Article 294, par. 5, of the Revised Penal Code, as amended.[21]

Criminal Case No. 2001-815 (For: Rape)

The undersigned Assistant City Prosecutor accuses, JUANITO CABIGQUEZ *Y* ALASTRA *ALIAS* "DODOY," of the crime of RAPE that he committed as follows:

> That on March 27, 2001, at more or less 3:30 o'clock or thereabout, in the early morning, at Purok 1A, Tablon, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, and with the use thereof, by means of force, and intimidation,

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[21] CA *rollo*, p. 12.

did then and there willfully, unlawfully and feloniously have carnal knowledged (sic) of the offended party [AAA], against her will [and] in the presence and full view of her children.

Contrary to and in violation to (sic) Article 266-A (Formerly under Art. 335) of the Revised Penal Code, as amended by R.A. 8353.[22]

Both accused pleaded not guilty to the charges.[23] During the trial, Cabigquez admitted that on the night of March 26, 2001, he slept in the house of Leonila Omilao, a neighbor of Cabigquez and AAA.[24] He admitted that he did not have any quarrel with AAA and found no possible reason why AAA would file the complaints and testify against him.[25] Omilao herself testified that Cabigquez was in her house on the night of the incident and even saw the latter sleeping in the kitchen. During Omilao's cross-examination, however, the trial court noted Silvina Cabigquez, appellant's daughter, coaching Omilao in her answers.[26]

On October 21, 2002, the trial court, on motion by the defense, ordered the National Bureau of Investigation (NBI) in Manila to conduct a *deoxyribonucleic* acid (DNA) analysis on the sperm taken from AAA's vagina. On May 21, 2003, NBI Forensic Chemist III Aida Viloria Magsipoc testified that the sample collected from AAA did not match Cabigquez's DNA profile since the specimen submitted to them were mere vaginal discharges from AAA.[27]

On October 29, 2003, the trial court rendered judgment convicting Cabigquez and Grondiano of the crimes charged. The dispositive portion of said decision reads:

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[22] *Id.* at 13.

[23] *Id.* at 34-35; records, Vol. II, p. 27; records, Vol. I, p. 41.

[24] *Id.* at 44.

[25] *Id.* at 44-45.

[26] *Id.* at 44; TSN, July 8, 2002, p. 35.

[27] *Rollo*, p. 9.

IN THE LIGHT OF ALL THE FOREGOING, the Court finds accused JUANITO CABIGQUEZ GUILTY beyond reasonable doubt of the crime of Rape under Article 266-A of the Revised Penal Code, punishable under Article 266-B of the same Code, and there being one aggravating circumstance [the used (sic) of a deadly weapon (firearm)] without a[ny] mitigating circumstance, accused JUANITO CABIGQUEZ is hereby sentenced and is SO ORDERED to suffer the supreme penalty of Death by lethal injection, including its accessory penalties. He is further directed and is SO ORDERED to pay the victim the sum of FIFTY THOUSAND PESOS (₱50,000.00) as indemnity, plus another TWENTY FIVE THOUSAND PESOS (₱25,000.00), as moral damages. Pursuant to Section 22 of R.A. 7659 and Section 10 of Rule 122 of the Rules of Court, let the entire record of this case be forwarded to the Supreme Court for automatic review.

FURTHERMORE, the Court likewise finds accused JUANITO CABIGQUEZ and ROMULO GRONDIANO GUILTY beyond reasonable doubt of the Crime of Robbery punishable under paragraph 5 of Article 294 of the Revised Penal Code, and [there] being no aggravating nor mitigating circumstance, and after applying the Indeterminate Sentence Law, accused JUANITO CABIGQUEZ and ROMULO GRONDIANO are hereby sentenced and are SO ORDERED to serve the [penalty of] imprisonment of TWO (2) YEARS, TEN (10) MONTHS AND TWENTY (20) DAYS OF *PRISION CORRECCIONAL*, as the MINIMUM, to SIX (6) YEARS, ONE (1) MONTH AND ELEVEN (11) DAYS OF *PRISION MAYOR*, as the MAXIMUM, including its accessory penalties, plus further SO ORDERED to pay the stolen items and cash in the sum of TEN THOUSAND PESOS (₱10,000.00).

SO ORDERED. Cagayan de Oro City, October 29, 2003.[28]

The records of the case were elevated to this Court on automatic review. Pursuant to our ruling in *People v. Mateo*,[29] the case was referred to the CA.

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[28] CA *rollo*, pp. 50-51.

[29] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. The case modified the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 insofar as they provide for direct appeals from the

In his appeal, appellant maintained his defense of alibi and denial. He questioned the accuracy and credibility of BBB's testimony given her failure to immediately divulge the identity of the perpetrators after the incident. Appellant also noted that AAA's lone interjection, while she was allegedly being raped by him, can hardly be considered as a manifest resistance.[30] The defense also argued that the prosecution failed to establish conspiracy since BBB did not actually see that Cabigquez was on the balcony while the robbery was being committed.[31]

By Decision dated July 9, 2008, the CA upheld the RTC in convicting appellant of both crimes of robbery and rape. The CA found BBB's testimony candid and not prompted by ill-motive. As to BBB's failure to promptly implicate Grondiano and Cabigquez for the crimes, the appellate court ruled that this cannot be taken against her in the light of serious threats made by said accused on their family. The alleged contradictions in the testimonies of AAA and BBB were likewise not fatal to the case of the prosecution as they bear no materiality to the commission of the crime. The CA also noted that the accused were able to consummate their criminal acts without any physical resistance from the victims who could not even cry loudly because they were ordered at gunpoint not to make any noise. It rejected the defense of alibi put up by Cabigquez in view of his admission that he stayed at a house within the vicinity of AAA's store.[32]

The CA thus decreed:

WHEREFORE, premises considered, the appealed October 29, 2003 Decision of the Regional Trial Court (RTC) of Misamis Oriental, 10th Judicial Region, Branch 18, Cagayan de Oro City, convicting Juanito A. Cabigquez, the lone appellant before Us, for the crimes

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Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment and allowed intermediate review by the Court of Appeals before such cases are elevated to the Supreme Court.

[30] CA *rollo*, pp. 90-93.

[31] *Id.* at 95.

[32] *Rollo*, pp. 15-16.

of Robbery and Rape, is hereby AFFIRMED with MODIFICATION in that Juanito A. Cabigquez is hereby sentenced to suffer the penalty of *reclusion perpetua* for the crime of Rape.

SO ORDERED.[33]

Before this Court, appellant Cabigquez reiterates the following arguments:

I.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II.

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PROSECUTION WITNESSES.

III.

ASSUMING *ARGUENDO* THAT THE ACCUSED-APPELLANTS COMMITTED ROBBERY, THE COURT *A QUO* GRAVELY ERRED IN ORDERING THEM TO PAY THE COMPLAINANT ₱10,000.00 AS ACTUAL DAMAGES.

IV.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THERE WAS CONSPIRACY IN THE CASE AT BAR.[34]

We sustain the ruling of the CA.

The factual findings of the RTC, as affirmed by the appellate court, indubitably prove that appellant raped AAA even if the specimen obtained from the vaginal swabs and submitted to the NBI failed to match appellant's DNA profile. Rape is committed by a man who shall have carnal knowledge of a woman through

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[33] *Id.* at 18.

[34] See *rollo,* pp. 38-39; CA *rollo,* pp. 82-83.

force, threat or intimidation.[35] The commission of rape was clearly shown by testimonial and documentary evidence; the defense submits that it is the identity of the perpetrator which is not duly established.

For purposes of criminal investigation, DNA identification is indeed a fertile source of both inculpatory and exculpatory evidence.[36] In this case, however, the result of the DNA test is rendered inconclusive to exculpate or inculpate the appellant since the sample tested by the NBI merely contained vaginal discharges. In the laboratory test earlier conducted by Dr. Villapañe on the vaginal swab obtained from AAA's genitalia, the presence of spermatozoa was confirmed. This notwithstanding, the totality of evidence satisfactorily established that it was indeed appellant who raped AAA.

AAA's daughter, BBB, who witnessed the entire incident which happened inside their store on the night in question, positively identified appellant as the one who raped her mother against the latter's will by threatening her and her children with a handgun he was then carrying. BBB's unflinching and consistent testimony, when taken together with Dr. Villapañe's findings and AAA's own declarations in court, provides sufficient basis for the conviction of appellant for rape.

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[35] Paragraph 1 of Article 266-A of the Revised Penal Code specifically provides:

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 otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

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.

[36] *People v. Umanito*, G.R. No. 172607, October 26, 2007, 537 SCRA 552, 560.

Quoted herein are the relevant portions of BBB's testimony on direct examination as to her identification of appellant as her mother's rapist, *viz*:

Q Now, [BBB], you said that you are 13 years old and you said a while ago you sworn that you will tell the truth, can you remember that?

A Yes, sir.

Q Okay now, are you going to tell the truth and nothing but the truth before this Honorable Court?

A Yes, sir I will tell the truth.

Q Do you know what will happen to you if you tell a lie in court?

A Yes, sir I will be imprisoned.

Q Do you want to be imprisoned?

A No, sir.

Q So, you will tell the truth nothing but the truth?

A Yes, sir.

Q Do you know accused Romulo Grondiano?

A Yes, sir because he is our neighbor.

x x x x x x x x x

Q **Do you also know accused Juanito Cabigquez who is accused for rape and co-accused in robbery?**

A **Yes, sir he is also our neighbor.**

Q **For how long have you known Juanito Cabigquez before March 27, 2001?**

A **Since I came that age of reason I already knew Juanito Cabigquez**.

Q Is Juanito Cabigquez also a resident of Purok 1-A at Tablon?

A Yes, sir.

Q Do you also know the nickname of Juanito Cabigquez?

A Its Dodoy.

Q If Juanito Cabigquez is inside this courtroom, can you point to him?

A Note: Witness pointed to a person who when asked of his name identified himself as Juanito Cabigquez.

Q Okay, on March 27, 2001 at about 3:30 early in the morning, do you remember where were you?

A I was inside our store sleeping together with our mother.

Q Aside from you and your mother, who were other persons who were with you?

A Together with my two (2) siblings.

x x x x x x x x x

Q Now, while you were sleeping together with your mother and your two (2) younger siblings at that time, what happened?

x x x x x x x x x

A The three (3) of us were awakened because of the shout of our mother.

Q Who is that us?

A I together with my two (2) siblings.

Q Your mother also woke up?

A Yes, sir.

Q Now, after you were awakened by the shout of your mother, what did you observe, if there was any?

A I saw my mother knelt down and I came nearer and then I embraced her because I thought she was dreaming but I saw Romulo Grondiano with a gun.

x x x x x x x x x

Q Alright, what happened while you saw accused Romulo Grondiano already at the door of your store of your mother holding a gun and your mother was kneeling?

A He ordered us to lay face down.

Q After Romulo Grondiano ordered you to lay face down, what did you, your mother and your two (2) siblings do?

A I let my mother lay face down.

Q How about you?

A I also lay face down.

Q How about your two (2) younger siblings?

A They also lay face down.

Q Alright, while the four (4) of you were lying face down, what did you observe?

A I noticed that he had a companion who is at our balcony.

Q How were you able to notice that he has a companion?

A Because we had a chair made of bamboo and then if somebody or a person hit it, it will sound.

x x x x x x x x x

Q Now, after Romulo Grondiano took all those things that you have enumerated a while ago, where did Romulo Grondiano go?

A He pointed a gun at my mother's back and then ordered us not to move.

x x x x x x x x x

Q Alright, after Romulo Grondiano told you, your mother and your two (2) younger siblings not to move, where did Romulo Grondiano go?

A He went to the balcony and then Juanito Cabigquez replaced him (Romulo) in going up, he (Juanito) went inside our store.

x x x x x x x x x

Q Alright, you testified a while ago that after Romulo Grondiano went inside your store he passed by the balcony of your house, then co-accused Juanito Cabigquez came in, where did Juanito Cabigquez come in?

A He entered in our store.

Q The same store where you, your mother and two (2) younger siblings were staying at that time?

A Yes, sir.

Q How were you able to recognize that it was Juanito Cabigquez who came in?

A **Because I saw him.**

Q When you saw Juanito Cabigquez, were you still lying face down or were you already sitting?

A **I was already lying face down.**

Q **How were you able to see him?**

A **Because I looked back at the door because I thought that Romulo Grondiano already left but then I saw Juanito Cabigquez came in and replaced Romulo Grondiano.**

Q This Juanito Cabigquez who came in after Romulo Grondiano went out, is he the same Juanito Cabigquez the co-accused for robbery and accused in rape case?

A Yes, sir.

Q If he is inside this courtroom, can you point him again?

A Note: Witness pointed again to a person who when asked of his name identified himself as Juanito Cabigquez.

Q After Juanito Cabigquez came in inside the store, what did you observe?

A **He removed the shortpants of my mother and then he got the pillow of my mother and placed it under her abdomen.**

x x x x x x x x x

Q Now, what was the position of your mother when Juanito Cabigquez took off the shortpants of your mother?

A She was still lying face down.

Q What was the position of your mother when Juanito Cabigquez put the pillow under her abdomen?

A She was still lying face down.

Q By the way, when Juanito Cabigquez entered the store, was the light still on?

A Yes, sir.

Q Now, you said that your mother shouted when Juanito Cabigquez came in. My question is, when did your mother actually shout?

A When Juanito Cabigquez was removing the shortpants of my mother.

COURT: (to the witness)

Q Can you tell the Court what kind of shout your mother did?

A **My mother shouted *"ay!"***

PROS. M. NOLASCO: (cont'g.)

Q Now, was Juanito able to take off the shortpants of your mother?

A Yes, sir because it was a gartered shortpants.

Q Now, how about the panty of your mother?

A It was removed together with the shortpants.

Q **Now, after the shortpants and panty of your mother were taken off and the pillow was placed under her abdomen, what next did you observe?**

A **Juanito Cabigquez mounted on my mother.**

Q And then, what did Juanito do when he mounted to your mother?

A **He did a push and pull motion.**

Q How about your two (2) younger siblings, were they still awake at that time?

A Yes, sir, they were crying.

Q How about you?

A I also cried.

Q When you noticed that he (Juanito Cabigquez) entered your store, was he carrying a gun?

x x x x x x x x x

A **He was bringing a gun.**

x x x x x x x x x

Q Can you demonstrate the length of the gun that you saw?

A The gun which Juanito Cabigquez was bringing was the same gun Romulo brought.

Q **How about your mother while Juanito Cabigquez was already mounted on her and make a push and pull motion, what did your mother do?**

A **My mother was crying.**

x x x x x x x x x

Q You said that you, your mother and your two (2) younger siblings were crying while Juanito Cabigquez mounted on your mother and made a push and pull motion, what happened after that?

A **He pointed his gun at the back of my mother and then told us not to tell to anybody because they will return and kill us.**

Q Now, after Juanito Cabigquez warned you not to tell anybody otherwise they will return and kill you, what did Juanito Cabigquez do?

A He went up to the balcony.

x x x x x x x x x

Q How about Juanito Cabigquez, when he entered your store of your mother and raped your mother, what was he wearing?

A He was wearing a white t-shirt and *maong* pants.

COURT: (to the witness)

Q Was it long or short?

A Long pants.

x x x x x x x x x[37] (Emphasis supplied.)

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[37] TSN, October 29, 2001, pp. 5-21.

Appellant asserts that it is significant that AAA herself did not recognize him and his co-accused despite her familiarity with them as they were her customers in her store. It was pointed out that the identification of the perpetrators was supplied solely by her daughter BBB, who should not have been given any credence in view of her inconsistent declarations such as when she testified that when she woke up, her mother was kneeling contrary to the latter's testimony that when clothes fell on her face, she was awakened and that her mother shouted but a gun was pointed to her. Moreover, BBB saw the accused several times after the alleged crimes transpired and yet she did not manifest any alarm even when they reported the matter to the police; it was only after the accused were detained that their identities were revealed. In the light of serious discrepancies in the testimonies of prosecution witnesses, appellant maintains that BBB's identification of the perpetrators of robbery and rape was unreliable and doubtful.[38]

We are not persuaded.

While it is true that the most natural reaction for victims of crimes is to strive to remember the faces of their assailants and the manner in which the craven acts are committed,[39] in this case, AAA cannot be faulted for failing to recognize appellant as her rapist though the latter was their neighbor. It must be recalled, as narrated by AAA and BBB, they were all still lying face down when appellant suddenly entered the store right after his co-accused Grondiano exited through the balcony taking the loot with him. BBB recounted that her mother was still lying face down when appellant removed her mother's short pants and panty, placed a pillow below her abdomen and then proceeded to rape her. It was BBB who had the opportunity to look at this second person who entered their house because she looked back at the door thinking that Grondiano (the one who first entered the store) already left, but then appellant immediately

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[38] CA *rollo*, pp. 90-91.

[39] *People v. Garcia*, G.R. Nos. 133489 & 143970, January 15, 2002, 373 SCRA 134, 151.

came in after Grondiano. Although AAA was able to shout at that time, she could not move because she was afraid that her three children, who were already crying, will be harmed.[40]

As to the alleged inconsistency in the position of her mother when accused Grondiano entered their store, the same is inexistent considering that AAA was relating the exact moment when she woke up and realized the presence of an intruder because clothes fell on her face, while BBB who was awakened by the shout of her mother, simply described her mother then already in a kneeling position as she woke up first. BBB had thought her mother was just dreaming but then she saw Grondiano already inside the house with a gun.

Neither would BBB's delay in revealing the identities of the perpetrators to the police taint her identification of appellant as the one who raped her mother and conspirator of Grondiano in robbing their store. Failure to immediately reveal the identity of a perpetrator of a felony does not affect, much less impair, the credibility of witnesses, more so if such delay is adequately explained.[41] BBB sufficiently explained her action in not immediately divulging to her mother and brother nor reporting to the police whom she saw inside their house that early morning of March 27, 2001. She was afraid that the assailants would make good their threat that they will return and kill their family if they reported the incident to anybody. But when a couple of months later appellant and his co-accused Grondiano were arrested on drug charges, BBB finally felt it was safe to come out in the open and inform the police of the identities of the two men who robbed their house, one of whom subsequently raped her mother (appellant).

Appellant cannot seek acquittal on the basis of the negative result of the DNA test on the specimen conducted by the NBI.

A positive DNA match is unnecessary when the totality of the evidence presented before the court points to no other possible

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[40] TSN, [AAA], January 8, 2002, p. 11.

[41] *People v. Casanghay,* G.R. No. 143005, November 14, 2002, 391 SCRA 638, 647.

conclusion, *i.e.*, appellant raped the private offended party. A positive DNA match may strengthen the evidence for the prosecution, but an inconclusive DNA test result may not be sufficient to exculpate the accused, particularly when there is sufficient evidence proving his guilt. Notably, neither a positive DNA match of the semen nor the presence of spermatozoa is essential in finding that rape was committed. The important consideration in rape cases is not the emission of semen but the penetration of the female genitalia by the male organ.[42]

Moreover, it is evident that the rape of AAA was committed in the presence and in full view of her three minor children. Thirteen (13)-year old BBB, as well as her two minor siblings who were present at the time when the rape was committed, was already old enough to sense the bestiality being committed against their own mother.[43] Such circumstance, as recited in the last portion of the Information for Criminal Case No. 2001-815 is, by itself, sufficient to qualify the rape under Article 266-B of the Revised Penal Code,[44] as amended. Consequently, the CA was correct in affirming the conviction of appellant for qualified rape.

With respect to the charge of robbery, we find no merit in appellant's argument that the prosecution failed to establish that he conspired with co-accused Grondiano in stealing goods from private complainant's store. He asserts that there was no proof that he was outside the store when the crime of robbery was

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[42] *People v. Hipona,* G.R. No. 185709, February 18, 2010, p. 7.

[43] TSN, [BBB], November 19, 2001, pp. 14-18.

[44] The fifth paragraph of Article 266-B of the Revised Penal Code reads:

ART. 266-B. *Penalties*. — x x x

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

x x x x x x x x x

(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.

being committed; private complainant and her daughter merely surmised that another person was outside the store because of a creaking sound created by a bamboo chair, but they actually did not see that person or if there was indeed that person.[45]

On this issue, we hold that the CA correctly ruled that conspiracy was sufficiently proven by circumstantial evidence on record, thus:

> We also find that the trial court correctly appreciated conspiracy against Cabigquez with respect [to] the crime of robbery. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of previous agreement to commit a crime is not necessary. Conspiracy may be shown through circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred upon the acts of the accused themselves when such lead to a joint purpose and design, concerted action, and community of interest.
>
> Neither [AAA] nor [BBB] saw Cabigquez acting as a lookout outside the store. However, the creaking sound coming from the balcony and the fact that [BBB] saw Cabigquez go inside the store, as soon as Grondiano left, reasonably verify a discernment that someone stood by outside and close to the store's entrance during the looting, and that such person was Cabigquez. The fact that only Grondiano concealed his face reasonably indicates a prior agreement between the two (2) malefactors for Cabigquez to act as a lookout in the commission of robbery. After raping [AAA], Cabigquez also warned of killing [AAA and her children] if they told anyone about the incident, which threat contributed to the common sentiment of concealing both crimes of robbery and rape. These circumstances sufficiently establish a joint purpose and design, and a community of interest, between Cabigquez and Grondiano, in committing the crime of robbery.[46]

On the matter of actual damages awarded by the trial court, appellant questions the amount thereof, insisting there was no basis for the actual cost of the items taken from the store.

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[45] CA *rollo*, p. 95.

[46] *Id.* at 245.

We find no reversible error committed by the CA in sustaining such award. In *People v. Martinez*,[47] this Court ruled that the trial court has the power to take judicial notice of the value of stolen goods because these are matters of public knowledge or capable of unquestionable demonstration. Judicial cognizance, which is based on considerations of expediency and convenience, displace evidence since, being equivalent to proof, it fulfills the object which the evidence is intended to achieve. Surely, matters like the value of the appliances, canned goods and perfume are undeniably within public knowledge and easily capable of unquestionable demonstration.[48] Here, what is involved are common goods for everyday use and ordinary stocks found in small *sari-sari* stores like private complainant's store, *i.e.*, milk, soap, coffee, sugar, liquor and cigarettes. The RTC was thus correct in granting the reasonable amount of ₱10,000.00 as computed by the private complainant representing the value of stolen merchandise from her store.

Further, the Court deems it proper to adjust the sums awarded as civil indemnity, moral and exemplary damages. Applying prevailing jurisprudence, the private complainant is entitled to ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.[49]

Lastly, the death penalty imposed on appellant was correctly modified to *reclusion perpetua*, in view of the passage of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines."[50] Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of the said law, which provides:

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[47] G.R. No. 116918, June 19, 1997, 274 SCRA 259.

[48] *Id.* at 273.

[49] *People v. Abulon*, G.R. No. 174473, August 17, 2007, 530 SCRA 675, 705; *People v. Bon*, G.R. No. 166401, October 30, 2006, 506 SCRA 168, 217, citing *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 719.

[50] Signed into law on June 24, 2006.

SEC. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

WHEREFORE, the appeal is *DISMISSED* and the Decision dated July 9, 2008 of the Court of Appeals, Mindanao Station in CA-G.R. CR-H.C. No. 00409 is *AFFIRMED with MODIFICATIONS* in that the penalty of *reclusion perpetua* imposed on appellant in Criminal Case No. 2001-815 for qualified rape is herein clarified as without eligibility for parole, and the appellant is ordered to pay the private complainant ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.

With costs against the appellant.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 185716. September 29, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MIGUELITO MALANA *Y* LARDISABAY,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; WHEN AND HOW COMMITTED.— At the time of commission of the crime, Republic Act No. 8353 or the Anti-Rape Law of 1997, amending Article 335 of

the Revised Penal Code and classifying rape as a crime against persons, was already in effect. Thus, the Informations charged accused-appellant with two counts of qualified rape. Article 266-A of the Revised Penal Code, which defines and penalizes rape, enumerates the circumstances under which rape is deemed committed: 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; x x x The prosecution must establish the following essential elements under Article 266-A(1)(a) of the Revised Penal Code, as amended, namely: (a) that the offender had carnal knowledge of a woman; and (b) that the same was committed by using force and intimidation.

2. ID.; ID.; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.— In reviewing rape cases we are guided by the following well-entrenched principles: (1) an accusation for rape can be made with facility: it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where 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. ID.; ID.; IT IS NOT NECESSARY FOR RAPE TO BE COMMITTED IN AN ISOLATED PLACE, FOR RAPISTS BEAR NO RESPECT FOR LOCALE AND TIME IN CARRYING OUT THEIR EVIL DEED.— The Court is not persuaded by the defense claim that the series of rape incidents could not have happened without the other members of the family being made aware of it. In a long line of cases, this Court has ruled that a small living quarter has not been considered to be a safe refuge from a sexual assault. Rape can be committed in the same room with the rapist's spouse or where other members of the family are also sleeping, in a house where there are other occupants or even in places which to many might appear unlikely and high-risk venues for its commission. Lust, it has been said before, is apparently no respecter of time and place. Neither is it necessary for the rape to be committed in an isolated place, for rapists bear no respect for locale and time in carrying out their evil deed.

4. ID.; ID.; IT IS NOT UNUSUAL FOR A RAPE VICTIM IMMEDIATELY FOLLOWING THE SEXUAL ASSAULT TO CONCEAL AT LEAST MOMENTARILY THE INCIDENT.— Private complainant did not immediately inform her mother about the incident. However, it is not unusual for a victim immediately following the sexual assault to conceal at least momentarily the incident, for it is not uncommon for a victim of rape to be intimidated into silence and conceal for sometime the violation of her honor, even by the mildest threat on her life. To recall, accused-appellant had threatened her not to tell anybody about the incident.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MOST BASIC CONSIDERATION IN EVERY PROSECUTION FOR RAPE, FOR THE LONE TESTIMONY OF THE VICTIM, IF CREDIBILE, IS SUFFICIENT TO SUSTAIN A VERDICT OF CONVICTION.— The determination of the credibility of the offended party's testimony is a most basic consideration in every prosecution for rape, for the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction. As in most rape cases, the ultimate issue in this case is credibility. In this regard, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial. The exceptions to the rule are when such evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied some facts or circumstance of weight and substance which could affect the result of the case. None of these circumstances are present in the case at bar to warrant its exception from the coverage of this rule.

6. ID.; ID.; ID.; A VICTIM OF RAPE WOULD NOT COME OUT IN THE OPEN IF HER MOTIVE IS ANYTHING OTHER THAN TO OBTAIN JUSTICE.— It is well-established that when a woman says that she has been raped, she says, in effect, all that is necessary to show that she has indeed been raped. A victim of rape would not come out in the open if her motive were anything other than to obtain justice. Her testimony as to who abused her is credible where she has absolutely no motive to incriminate and testify against the accused, as in this case

where the accusations were raised by private complainant against her own father.

7. ID.; ID.; ID.; A DAUGHTER WOULD NOT ACCUSE HER OWN FATHER OF A SERIOUS OFFENSE LIKE RAPE HAD SHE NOT REALLY BEEN AGGRIEVED.— Accused-appellant's defense that private complainant and her mother were harboring a personal grudge against him, fails in light of the positive and straightforward testimony of private complainant identifying accused-appellant as the one who had raped and ravished her. This is bolstered by the fact that it is unnatural for a parent to use his offspring as an engine of malice. Verily, the testimony of the rape victim against her father, in this particular case, is entitled to greater weight, since reverence and respect for elders is too deeply ingrained in Filipino children and is even recognized by law. Finally, a daughter would not accuse her own father of a serious offense like rape had she not really been aggrieved.

8. ID.; ID.; QUALIFYING CIRCUMSTANCES; MINORITY AND RELATIONSHIP; BOTH CIRCUMSTANCES MUST CONCUR TO QUALIFY THE CRIME OF RAPE.— Simple rape is punished under Article 266-A of the Revised Penal Code by the single indivisible penalty of *reclusion perpetua*. Article 266-B of the Revised Penal Code mandates that the death penalty shall 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, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; The Court of Appeals and RTC correctly disregarded the circumstances of minority and relationship. This Court has consistently ruled that the twin circumstances of minority and relationship are in the nature of qualifying circumstances which must be alleged in the information and proved during trial beyond reasonable doubt, otherwise, the accused should only be held liable for the crime of simple rape. These qualifying circumstances cannot be considered in fixing the penalty because minority, though alleged in the information was not proved. As regards relationship, the same was alleged and proved. Pursuant, to Section 266-B of the Revised Penal Code, in order to fall within subparagraph 1 of said provision, both circumstances of minority

and relationship must be alleged in the information and proved during trial. The twin circumstances of minority of the victim and her relationship to the offender must concur to qualify the crime of rape. In the instant case, only relationship was duly alleged and proved. Sections 8 and 9, Rule 110 of the Revised Rules on Criminal Procedure now provide that aggravating as well as qualifying circumstances must be alleged in the information and proven during trial, otherwise they cannot be considered against the accused. Thus, the same cannot be used to impose the higher penalty of capital punishment on accused-appellant. Thus, accused-appellant should be convicted of simple rape only and sentenced accordingly to *reclusion perpetua* in each case.

9. ID.; ID.; DEFENSES OF ALIBI AND DENIAL; INHERENTLY WEAK DEFENSES AND CANNOT PREVAIL OVER THE VICTIM'S POSITIVE AND STRAIGHTFORWARD DECLARATIONS IDENTIFYING ACCUSED AS THE ONE WHO COMMITTED THE BASTARDLY ACT AGAINST HER.— Denial and alibi are viewed by this Court with disfavor, considering these are inherently weak defenses, especially in light of private complainant's positive and straightforward declarations identifying accused-appellant as the one who committed the bastardly act against her, as well as her straightforward and convincing testimony detailing the circumstances and events leading to the rape.

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.*:

MIGUELITO MALANA *y* LARDISABAY, accused-appellant, was charged with two (2) counts of qualified rape, penalized under Article 266-B of the Revised Penal Code, before the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 13. Accused of raping his own 12-year-old daughter on separate

instances, accused-appellant was instead convicted of simple rape by the trial court in both criminal cases, sentencing him with the penalty of *reclusion perpetua*. On automatic review, the RTC Decision[1] was affirmed, with modification, by the Court of Appeals.[2] The case is now before Us on appeal.

Factual antecedents

On 2 February 2001, the Assistant Provincial Prosecutor filed two separate Criminal Informations against accused-appellant Miguel Malana *y* Lardisabay before the RTC of Malolos, Bulacan, Branch 13, for two counts of qualified rape. The cases, docketed as Criminal Case No. 452-M-01 and Criminal Case No. 453-M-01, imputed the following acts against him:

Criminal Case No. 452-M-01

That on or about June 2000, in the Municipality of Baliuag, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, by means of threats, force and intimidation and with lewd designs, have carnal knowledge of his daughter, AAA,[3] a girl 12 years of age against her will and consent.[4]

Criminal Case No. 453-M-01

That on or about the 10th day of December 2000, in the Municipality of Baliuag, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, by means of threats, force and intimidation and with lewd designs, have carnal

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[1] Penned by Presiding Judge Andres B. Soriano; CA *rollo*, pp. 9-14.

[2] Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Josefina Guevara Salonga and Ramon R. Garcia concurring; *Rollo*, pp. 2-11.

[3] Private complainant is referred to as AAA. In view of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Section 29 of Republic Act No. 7610, otherwise known as the Anti-violence Against Women and Their Children Act of 2004.

[4] Records, p. 1.

knowledge of his daughter, AAA,[5] a girl 12 years of age against her will and consent.[6]

Upon arraignment, accused-appellant, with the assistance of counsel, pleaded NOT GUILTY to all the charges.[7] Considering that the parties were the same in both cases, joint trial on the merits was conducted by the trial court.

In the ensuing trial on the merits, the prosecution, through the Office of the Solicitor General, presented two witnesses: private complainant AAA and the physician who did the Medico-Legal examination on her.

A close scrutiny of the narration of facts and evidence presented in the two criminal cases as testified by private complainant AAA reveal incriminating details.

From her testimony, it was elicited that she was 12 years old, having been born on 24 July 1989, and was a Grade V student. Identifying herein accused as her father, private complainant had two other brothers and four sisters. At the time the alleged incidents took place in June 2000 and 10 December 2000, private complainant's family were all living in a 6 x 6 meter rented room which served as their place of residence and sleeping quarters. There were no divisions in the 6 x 6 meter room.

Asked to circumstantiate her accusations, private complainant testified that the first rape incident happened at around 6:00 o'clock in the morning sometime in June 2000 in their living cum sleeping room. Private complainant, who was sleeping, was awakened by the act of her father who was then undressing her and who went on top of her, mashed her breast, and inserted his penis inside her vagina. It was disclosed that she was wearing her blouse, shorts, bra and underwear at that time. Accused-appellant, who was only wearing shorts, removed his shorts

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[5] *Supra* note 3.

[6] *Supra* note 4.

[7] Records, p. 11.

when he inserted his penis inside her vagina. For two months, AAA complained of pain because her father's penis had penetrated her vagina. The bestial act was committed by her father while her mother was not around. Accused-appellant had threatened her not to report the matter to her mother.

The second incident happened on 10 December 2000 at around 6:00 o'clock in the morning. At the time, private complainant's mother was at the market to buy fish ball supplies. Except for the date, the first and second incidents were perpetrated in the same manner. On said date and time, private complainant was sleeping with her 6-year-old sister, when she was awakened when she felt something heavy on top of her. Upon awaking, she saw her father was already on top of her. He removed her clothes, kissed her breast and inserted his penis inside her vagina. She cried because her father threatened her while holding held her neck, and warned her not to report the matter to anybody.

Because of the harrowing incidents, she was ashamed to attend classes because her playmates had seen her father being arrested by the police.

Upon medico-legal examination conducted by Dr. Ivan Richard Viray on 14 December 2000, it was found that subject is in non-virgin state physically but with no external signs of application of any form of trauma. He testified that based on the examination he conducted, the deep healed laceration could have been sustained more than seven days. According to him, a deep healed laceration may be considered permanent. Once the hymen is lacerated, it is permanently lacerated. When asked what could have caused such a laceration on the hymen, he explained that the probable cause of a laceration is the insertion of a hard object, such as a penis.

In support of the testimonies of the prosecution witnesses, the following documentary evidence, among others, were offered in court: (a) sworn statement of private complainant; and (b) Medico Legal Report No. MR-219-2000.

On the other hand, the defense presented accused-appellant Miguelito Malana *y* Lardisabay as its sole witness.

Accused-appellant admitted that private complainant is his daughter but denied ever raping her. At the time the incident was supposed to have occurred in June 2000, he was busy selling fish ball, *kikiam*, cigarettes, and beverages along the Baliuag bus terminal. He would start selling the same before 8:00 o'clock in the morning everyday and would arrive home at about 8:00 o'clock in the evening. Accused-appellant was a good father in that he treated his daughter well. He admitted, however, to physically hurting his children on several instances while he was drunk, allegedly because of their wrongdoings. Accused-appellant said private complainant is not a hard-headed child. When asked if he knows how his daughter AAA lost her virginity, accused-appellant replied in the negative. Neither did his wife say anything to him about it. Private complainant only filed the case against him due to her personal grudge against him, as he hurt his family whenever he was under the influence of alcohol.

On 4 September 2006, the trial court finally rendered its Decision.[8] Weighing the evidence adduced by both sides, the trial court accorded more credence to the evidence proffered by the prosecution, thus convicting accused-appellant of two counts of simple rape only, and not qualified rape, *viz*.:

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WHEREFORE, premises considered, the Court finds the accused:

(a) In Criminal Case No. 452-M-2001, guilty beyond reasonable doubt of the crime of rape punished under the provisions of Article 266-B of the Revised Penal Code, and hereby sentences him to suffer the penalty of *reclusion perpetua*; and

(b) In Criminal Case No. 453-M-2001, guilty beyond reasonable doubt of the crime of rape punished under the provisions of Article 266-B of the Revised Penal Code, and hereby sentences him to suffer the penalty of *reclusion perpetua*.

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[8] *Supra* note 1.

> The accused is likewise directed to indemnify the private complainant in the amount of ₱75,000.00 for each count (total amount ₱150,000.00).

x x x x x x x x x

The penalty imposed in the two criminal cases being *reclusion perpetua*, the case was immediately brought to the Court of Appeals on automatic review, in view of this Court's ruling in *People v. Mateo*.[9]

Insisting on his innocence, accused-appellant questioned the RTC decision before the Court of Appeals on the ground of reasonable doubt, with the apparent inconsistencies in private complainant's testimony as well as the impossibility of committing the rape in their small quarters where the rest of the family members were.

However, upon review and seeing no sufficient basis to overturn the findings of the lower court, the Court of Appeals rendered its Decision[10] which affirmed the findings and conclusions of the trial court with modification pertaining to the award of moral damages in the amount of ₱75,000.00, which was not initially granted by the trial court.

Adopting the factual findings of the RTC, the Court of Appeals resolved the case in this wise:

> WHEREFORE, premises considered, the assailed September 4, 2006 Decision of the Regional Trial Court of Malolos, Bulacan, Branch 13, in Crim. Case Nos. 452-M-2001 and 453-M-2001, is hereby MODIFIED in that moral damages in the amount of ₱75,000.00 is hereby awarded, but the rest of the decision is hereby AFFIRMED. Pursuant to Section 13 (c), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, this judgment of the Court of Appeals may be appealed to the Supreme Court by

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[9] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[10] *Rollo*, pp. 2-11.

notice of appeal and filed with the Clerk of Court of the Court of Appeals.[11]

Undaunted, accused-appellant filed his Notice of Appeal[12] with this Court within the reglementary period. The prosecution and defense were ordered to file their respective supplemental briefs, if they so desired, within thirty (30) days from notice.[13] The prosecution opted to adopt its brief submitted before the Court of Appeals, whereas the defense proceeded with the filing of its supplemental brief.[14]

Raising the same assignment of errors submitted in issue before the Court of Appeals, accused-appellant points out a lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT'S GUILT WAS PROVEN BEYOND REASONABLE DOUBT.

Accused-appellant impugns the findings of the court below and those of the trial court, for according more weight and credence to the testimony of private complainant, instead of giving credence to the defense version invoking his innocence. Countering the rape charges, accused-appellant denied committing the crime and argued that he was somewhere else at the time the incident was supposed to have occurred. According to him, private complainant and her mother harbored a grudge toward him resulting in the trumped-up rape charges. Attacking the credibility of the prosecution witnesses, the defense posits that private complainant's testimony hardly deserves consideration for being incredulous and full of inconsistencies. In challenging the findings of the court *a quo*, accused-appellant raises the impossibility of committing rape within the confines of a small

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[11] *Rollo*, pp. 10-11.

[12] *Id.* at 12.

[13] *Id.* at 16.

[14] *Id.* at 26-30.

enclosed 6 x 6 meters room, where private complainant was sleeping with the rest of the family members.

After a thorough review and evaluation of the records of this case, We find no cogent reason to reverse the assailed judgment of the trial court and the Court of Appeals convicting accused-appellant of Simple Rape in Criminal Case Nos. 452-M-2001 and 453-M-2001.

At the time of commission of the crime, Republic Act No. 8353 or the Anti-Rape Law of 1997, amending Article 335 of the Revised Penal Code and classifying rape as a crime against persons, was already in effect. Thus, the Informations charged accused-appellant with two counts of qualified rape. Article 266-A of the Revised Penal Code, which defines and penalizes rape, enumerates the circumstances under which rape is deemed committed:

> 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; x x x

The prosecution must establish the following essential elements under Article 266-A(1)(a) of the Revised Penal Code, as amended, namely: (a) that the offender had carnal knowledge of a woman; and (b) that the same was committed by using force and intimidation.

Contrary to accused-appellant's contentions, this Court finds no cogent reason to doubt the veracity of private complainant's testimony.

In reviewing rape cases we are guided by the following well-entrenched principles: (1) an accusation for rape can be made with facility: it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where 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.[15]

The determination of the credibility of the offended party's testimony is a most basic consideration in every prosecution for rape, for the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction.[16] As in most rape cases, the ultimate issue in this case is credibility. In this regard, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial.[17] The exceptions to the rule are when such evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied some facts or circumstance of weight and substance which could affect the result of the case.[18] None of these circumstances are present in the case at bar to warrant its exception from the coverage of this rule.

It is well-established that when a woman says that she has been raped, she says, in effect, all that is necessary to show that she has indeed been raped.[19] A victim of rape would not come out in the open if her motive were anything other than to obtain justice. Her testimony as to who abused her is credible where she has absolutely no motive to incriminate and testify against the accused,[20] as in this case where the accusations

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[15] *People v. Nicolas,* G.R. No. 167955, 30 September 2009, 601 SCRA 385, 399; *People v. Ramos*, G.R. No. 179030, 12 June 2008, 554 SCRA 423, 430.

[16] *People v. Peralta,* G.R. No. 187531, 16 October 2009, 604 SCRA 285, 289.

[17] *Remiendo v. People,* G.R. No. 184874, 9 October 2009, 603 SCRA 274, 287.

[18] *People v. Panganiban,* 412 Phil. 98, 107 (2001).

[19] *People v. Paculba,* G.R. No. 183453, 9 March 2010.

were raised by private complainant against her own father.

Testifying before the trial court, private complainant narrated in detail the harrowing events which transpired that night:

Q. Miss witness, on June 2000 at about 6:00 o'clock in the morning, do you recall of any unusual incident which has connection with your father and has connection with this case?
A. Yes, sir.

Q. What was that unusual incident that happened?
A. I was sleeping when all of a sudden, I found him already on top of me, sir.

Q. After that, what happened?
A. After that, he undressed me, sir.

Q. At that time, where were the rest of the family?
A. My mother at that time was not around while my 2 brothers were still sleeping, sir.

Q. You said the accused undressed you. What happened after that?
A. After that, he inserted his penis inside my vagina, sir.

Q. Miss witness, may we know your apparel at that time?
A. I was wearing blouse and short, sir.

Q. Do you have underwear at that time?
A. Yes, sir.

Q. How about bra?
A. Yes, sir.

Q. How about the accused. What was he wearing at that time?
A. He was wearing short while nothing on his body, sir.

Q. Miss witness, you said your father undressed you. How about him. What did he do with his clothes?
A. He also removed his short, sir.

Q. You said your father inserted his penis to (sic) your vagina.

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[20] *People v. Ugos*, G.R. No. 181633, 12 September 2008, 565 SCRA 207, 216; *People v. Miñon*, G.R. Nos. 148397-400, 7 July 2004, 433 SCRA 671, 681.

May we know what was your position at that time when your father inserted his penis to (sic) your vagina?

A. I was lying on my back, sir.

Q. When you were lying on your back, how about the accused. What was his position?

A. He was on top of me, sir.

Q. While he was on top of you, exactly, what did he do to you?

A. He mashed my breast, sir.

Q. You said the accused inserted his penis to (sic) your vagina. How did the accused insert his penis to (sic) your vagina?

A. '*Nakahiga po ako tapos noong nagising po ako, nakita ko na lang siya na nakapatong sa ibabaw ko, sir.*'

Q. Miss witness, you said that you were then sleeping. Why did you say that your father was on top of you?

A. Because I felt that as if something was on top of me which is heavy, sir.

Q. When you felt that something was on top of you, what happened after that?

A. I was surprised, sir. When I was about to shout, my father held my neck, sir.

Q. You said you were held by your neck, what happened after that?

A. After that, he already raped me, sir.

Q. Miss witness, could you still recall for how long your father was on top of you?

A. Maybe around two (2) minutes, sir.

Q. After that 2 minutes, what happened?

A. After that 2 minutes, he put on his apparel and he also instructed me to put on my dress also, sir.

Q. Miss witness, you said your father inserted his penis to (sic) your vagina. What did you feel when your father inserted his penis to (sic) your vagina?

A. I was hurt, sir.

Q. You said you were hurt by the insertion of the penis of your father to (sic) your vagina. What did you do when you felt that pain?

A. I tried to remove but I cannot because his body was so heavy, sir.

Q. You said your father put on his clothes and you, he told you to put on also your clothes. What happened, after that?
A. After that, my mother arrived but I was not able to report the same because I was afraid to (sic) my father, sir.

Q. May we know why you were afraid to (sic) your father?
A. Because my father warned me not to report the matter, sir.

Q. When did your father warned (sic) you?
A. After the incident, sir.[21]

Private complainant testified that she was again raped by accused-appellant under the following circumstances:

Q. AAA, on December 10, 2000, do you recall of any unusual incident that happened?
A. Yes, sir.

Q. Can you tell the Honorable Court what that unusual incident that happened (was)?
A. I was raped by my father, sir.

Q. Who is that father of yours?
A. Miguelito Malana, sir.

Q. If he is present today kindly point (to) him?
A. Me, sir. (Witness pointed to a man inside the chambers who, when asked, gave his name as Miguelito Malana)

Q. Miss Witness, what time of the day did it happen, evening or morning?
A. It was daytime, about 6:00, sir.

Q. On that date, was there any person present in your house?
A. Yes, sir.

Q. Who were those persons present?
A. My other siblings, sir.

Q. How many?
A. Three (3), sir.

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[21] TSN, 20 September 2001, pp. 9-14.

Q. How old is the eldest present at that time?
A. Seventeen (17) years old, sir.

Q. You said that those persons present in that house were your brothers and sisters. How was your father able to rape you if there were other persons present in that house?
A. We were all asleep at that time, sir.

Q. Who was with you at the time you were sleeping?
A. My sister, sir.

Q. How old is she?
A. Six (6) years old, sir.

Q. Did you mean to say that you and your small sister were then sleeping separately from your other brothers?
A. Yes, sir.

Q. How about your mother?
A. My mother used to sleep beside us but at that time she was not around, sir.

Q. Where was she at that time?
A. She went to the market to buy fish ball, sir.

Q. Am I right to say that your mother was engaged in the selling of fish balls?
A. It was only my mother who did the marketing but the fish balls were being sold by my father, sir.

Q. How did your father rape you at that time?
A. I was then sleeping when I woke up because of his weight over me, sir. I woke up when he was already on top of me.

Q. After that what happened?
A. After that he undressed me and also removed his clothes, sir.

Q. After that what happened?
A. It was then that he started raping me, sir.

Q. How did he start raping you?
A. He kissed my breast, sir.

Q. After kissing your breast what happened?
A. After that he inserted his penis into my vagina, sir.

Q. After inserting his penis in your vagina, what happened?
A. He started kissing my lips, sir.

Q. May we know your relative positions at the time your father inserted his penis into your vagina?
A. I was lying down on my back, sir.

Q. Am I right to say that your father was on top of you?
A. Yes, sir.

Q. While he was on top of you what was he doing?
A. His body was moving, sir.

Q. After that what happened?
A. I was then crying and I screamed because he held me by my neck, sir.

Q. What did you feel when your father held your neck?
A. It was painful, sir.

Q. After that what happened?
A. After that he warned me not to report to anybody what happened, sir.

Q. After telling you not to report to anybody, what happened?
A. No more, sir. I put on my clothes, sir.[22]

While a medico-legal finding is not a requisite of rape, its evidentiary weight cannot be disregarded. As testified to by P/Sr. Insp. and Medico-Legal Officer Ivan Richard A. Viray, the Medico-Legal Report on private complainant contained the following findings:

MEDICO-LEGAL REPORT NO. MR-219-2000

HYMEN:

Elastic fleshy type with the presence of shallow healed lacerations at 2, 6 o'clock positions & deep healed lacerations at 3 & 9 o'clock

CONCLUSION:

Subject is in non-virgin state physically

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[22] TSN, 17 January 2002, pp. 3-7.

There are no external signs of application of any form of trauma.[23]

Denial and alibi are viewed by this Court with disfavor,[24] considering these are inherently weak defenses,[25] especially in light of private complainant's positive and straightforward declarations identifying accused-appellant[26] as the one who committed the bastardly act against her, as well as her straightforward and convincing testimony detailing the circumstances and events leading to the rape.[27]

The Court is not persuaded by the defense claim that the series of rape incidents could not have happened without the other members of the family being made aware of it. In a long line of cases, this Court has ruled that a small living quarter has not been considered to be a safe refuge from a sexual assault.[28] Rape can be committed in the same room with the rapist's spouse or where other members of the family are also sleeping,[29] in a house where there are other occupants or even in places which to many might appear unlikely and high-risk venues for its commission.[30] Lust, it has been said before, is apparently no respecter of time and place.[31] Neither is it necessary for the

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[23] Records, p. 87.

[24] *People v. Peralta,* G.R. No. 187531, 16 October 2009, 604 SCRA 285, 290.

[25] *People v. Estrada,* G.R. No. 178318, 15 January 2010, 610 SCRA 222, 233.

[26] *People v. Paculba, supra* note 19; *People v. Achas,* G.R. No. 185712, 4 August 2009, 595 SCRA 341, 353.

[27] *Id.*

[28] *People v. Guntang*, 406 Phil. 487, 524 (2001).

[29] *People v. Domingo*, G.R. No. 177136, 30 June 2008, 556 SCRA 788, 804; *People v. Orande,* 461 Phil. 403, 415 (2003).

[30] *People v. Montesa,* G.R. No. 181899, 27 November 2008, 572 SCRA 317, 337.

[31] *People v. Evina*, 453 Phil. 25, 41 (2003).

rape to be committed in an isolated place, for rapists bear no respect for locale and time in carrying out their evil deed.[32]

Private complainant did not immediately inform her mother about the incident. However, it is not unusual for a victim immediately following the sexual assault to conceal at least momentarily the incident, for it is not uncommon for a victim of rape to be intimidated into silence and conceal for sometime the violation of her honor, even by the mildest threat on her life.[33] To recall, accused-appellant had threatened her not to tell anybody about the incident.

Accused-appellant's defense that private complainant and her mother were harboring a personal grudge against him, fails in light of the positive and straightforward testimony of private complainant identifying accused-appellant as the one who had raped and ravished her. This is bolstered by the fact that it is unnatural for a parent to use his offspring as an engine of malice.[34] Verily, the testimony of the rape victim against her father, in this particular case, is entitled to greater weight, since reverence and respect for elders is too deeply ingrained in Filipino children and is even recognized by law.[35] Finally, a daughter would not accuse her own father of a serious offense like rape had she not really been aggrieved.[36]

Simple rape is punished under Article 266-A of the Revised Penal Code by the single indivisible penalty of *reclusion perpetua*. Article 266-B of the Revised Penal Code mandates that the death penalty shall be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

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[32] *People v. Cañada*, G.R. No. 175317, 2 October 2009, 602 SCRA 378, 394 citing *People v. Watimar*, G.R. Nos. 121651-52, 16 August 2000, 338 SCRA 173; *People v. Alkhoda*, G.R. No. 178067, 11 August 2008, 561 SCRA 696.

[33] *People v. Abella*, 373 Phil. 650, 658 (1999).

[34] *People v. Capareda*, 473 Phil. 301, 332 (2004).

[35] *People v. Calderon*, 441 Phil. 634, 642 (2002) citing *People vs. Docena*, G.R. Nos. 131894-98, 20 January 2000, 322 SCRA 820, 830.

[36] *People v. Calderon*, *id.* at 644; *People v. Docena*, *id.* at 831.

(1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

The Court of Appeals and RTC correctly disregarded the circumstances of minority and relationship. This Court has consistently ruled that the twin circumstances of minority and relationship are in the nature of qualifying circumstances which must be alleged in the information and proved during trial beyond reasonable doubt, otherwise, the accused should only be held liable for the crime of simple rape.[37] These qualifying circumstances cannot be considered in fixing the penalty because minority, though alleged in the information was not proved. As regards relationship, the same was alleged and proved. Pursuant, to Section 266-B of the Revised Penal Code, in order to fall within subparagraph 1 of said provision, both circumstances of minority and relationship must be alleged in the information and proved during trial.

The twin circumstances of minority of the victim and her relationship to the offender must concur to qualify the crime of rape. In the instant case, only relationship was duly alleged and proved.

Sections 8 and 9, Rule 110 of the Revised Rules on Criminal Procedure now provide that aggravating as well as qualifying circumstances must be alleged in the information and proven during trial, otherwise they cannot be considered against the accused. Thus, the same cannot be used to impose the higher penalty of capital punishment on accused-appellant.

Thus, accused-appellant should be convicted of simple rape only and sentenced accordingly to *reclusion perpetua* in each case.[38]

Jurisprudence dictates that, upon a finding of the fact of rape, the award of civil indemnity *ex delicto* is mandatory. The

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[37] *People v. Biong*, 450 Phil. 432, 445 (2003).

[38] Rape, defined and penalized under paragraph 1(a) of Article 266-A, in relation to Article 266-B, of the Revised Penal Code, as amended by Republic Act No. 8353, is punishable by *reclusion perpetua, viz.*:

Court of Appeals erroneously awarded civil indemnity in the amount of ₱75,000.00, which amount is given in qualified rape cases. This being a case of simple rape only, the award of ₱50,000.00 as civil indemnity is proper.[39] In addition, moral damages in the amount of ₱50,000.00 is automatically granted in addition to civil indemnity without need of further proof inasmuch as it is assumed that a victim of rape has actually suffered moral injuries that entitles her to such an award. From the foregoing, private complainant is entitled to the amount of ₱50,000.00 as moral damages, without need of proof, and another ₱30,000.00 as exemplary damages for each count of rape, to set an example for the public good.[40]

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 02496 dated 21 December 2007 finding herein accused-appellant *MIGUELITO MALANA y LARDISABAY* guilty beyond reasonable doubt of *SIMPLE RAPE*, violating Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, and sentencing him to suffer the penalty of *reclusion perpetua* in Criminal Case Nos. 452-M-01 and 453-M-01 is hereby *AFFIRMED*, with *MODIFICATION* as to the award of damages.

Accused-appellant is ordered to pay the offended party, private complainant AAA, the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages pursuant to prevailing jurisprudence, corresponding to each count of simple rape. *Costs de oficio.*

SO ORDERED.

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

ARTICLE 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

[39] *People v. Biong, supra* note 37 at 448; *People v. Zamoraga,* G.R. No. 178066, 6 February 2008, 544 SCRA 143, 154.

[40] *People v. Ofemiano,* G.R. No. 187155, 1 February 2010, 611 SCRA 250, 260.

SECOND DIVISION

[A.C. No. 3872. October 4, 2010]

TRINIDAD IRORITA, *petitioner, vs.* **ATTY. JIMMY LUCZON,** *respondent.*

SYLLABUS

REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASES; THE CASE AT BAR IS PROPERLY DISMISSED FOR BEING MOOT AND ACADEMIC.— The documents submitted sufficiently established the identities of both Atty. Jimmy C. Luczon and Judge Jimmy Henry F. Luczon, Jr., and that they are two different individuals. It is likewise established that Judge Luczon could not have been the respondent in the instant case. Furthermore, in view of the death of Atty. Jimmy Luczon during the pendency of the case, we deem it proper to dismiss the instant case for being moot and academic.

R E S O L U T I O N

PERALTA, *J.*:

Before this Court is the Manifestation with Motion dated April 26, 2010 and Motion to Resolve dated August 2, 2010, filed by Judge Jimmy F. Luczon Jr., which seeks the dismissal of the administrative complaint against his father, Atty. Jimmy C. Luczon, and thereafter correct the discrepancy in the docketing of the case and clear his name.

In his Manifestation/Motion, Judge Luczon averred that on July 20, 1992, a certain Trinidad Irorita filed a disbarment case against his father, Atty. Jimmy Luczon. He claimed that the said disbarment case was docketed as *Trinidad Irorita v. Atty. Jimmy Luczon*. Judge Luczon maintained, however, that he is not the *Atty. Jimmy Luczon* referred to as respondent in the instant case but his father.

For clarification, Judge Luczon stressed that he could not be the Atty. Luczon named as respondent in the instant case because

at the time of the referral of the case to Atty. Luczon, he was already the presiding judge of the Municipal Trial Court of Lallo, Cagayan, Branch 1, pursuant to his appointment in 1985.[1] He also explained that his father's middle name is "Cortez," while his is "Furagganan," and that his name has the letters "Jr" suffixed to his name.

Judge Luczon, likewise, manifested that his father died on August 4, 1994 as evidenced by the Certificate of Death issued by the National Statistics Office.

Judge Luczon compulsorily retired from the service as Presiding Judge of the Regional Trial Court of Tuguegarao City, Branch 1, Cagayan on May 24, 2010. His retirement benefits, as well as the monetary value of his leave credits, however, have yet to be released since the necessary clearances cannot be issued due to the pendency of the instant case. He presumed that the docketing of the case with only *Atty. Jimmy Luczon* stated in the case title probably caused confusion, since he and his father are namesakes. Hence, Judge Luczon prays that the instant case be resolved in order to clear his name and absolve him from administrative liability.

We find Judge Luczon's motion to be meritorious. The documents[2] submitted sufficiently established the identities of both Atty. Jimmy C. Luczon and Judge Jimmy Henry F. Luczon, Jr., and that they are two different individuals. It is likewise established that Judge Luczon could not have been the respondent in the instant case. Furthermore, in view of the death of Atty. Jimmy Luczon during the pendency of the case, we deem it proper to dismiss the instant case for being moot and academic.

ACCORDINGLY, the *Manifestation* and *Motion* dated April 26, 2010 and *Motion to Resolve* dated August 2, 2010

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[1] Judge Luczon took his oath on September 30, 1985.

[2] Annex "1" - Transmittal letter of Appointment of Judge Luczon dated November 4, 1985; Annex "2" - Panunumpa sa Katungkulan, dated September 30, 1985; Annex "3" — Service Record of Judge Luczon; Annex "4" — Certificate of Death of Atty. Jimmy Cortez Luczon issued by the National Statistics Office.

are *GRANTED*. Administrative Case No. 3872, against Atty. Jimmy Luczon is *DISMISSED* for being moot and academic. The Court further *ORDERS* the Office of the Bar Confidant to make the necessary correction in the records of both Atty. Jimmy C. Luczon and Judge Jimmy Henry F. Luczon, Jr., in order to facilitate the release of the retirement benefits of Judge Luczon in the event that there is no other pending administrative complaint against him.

SO ORDERED.

Velasco, Jr.,[*] *Nachura,*[**] *Mendoza,* and *Sereno,*[***] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 158090. October 4, 2010]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), *petitioner, vs.* **HEIRS OF FERNANDO F. CABALLERO, represented by his daughter, JOCELYN G. CABALLERO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; KINDS OF PLEADINGS; COUNTERCLAIM; TESTS TO DETERMINE WHETHER A COUNTERCLAIM IS COMPULSORY OR NOT.— To determine whether a counterclaim is compulsory

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[*] Designated as an additional member in lieu of Senior Associate Justice Antonio T. Carpio, per Special Order No. 897, dated September 28, 2010.

[**] Per Special Order No. 898, dated September 28, 2010.

[***] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 903, dated September 28, 2010.

or not, the Court has devised the following tests: (a) Are the issues of fact and law raised by the claim and by the counterclaim largely the same? (b) Would *res judicata* bar a subsequent suit on defendant's claims, absent the compulsory counterclaim rule? (c) Will substantially the same evidence support or refute plaintiff's claim as well as the defendant's counterclaim? and (d) Is there any logical relation between the claim and the counterclaim? A positive answer to all four questions would indicate that the counterclaim is compulsory.

2. ID.; ID.; ID.; ID.; PERMISSIVE COUNTERCLAIMS; FOR THE TRIAL COURT TO ACQUIRE JURISDICTION, THE COUNTERCLAIMANT IS BOUND TO PAY THE PRESCRIBED DOCKET FEES.— The rule in permissive counterclaims is that for the trial court to acquire jurisdiction, the counterclaimant is bound to pay the prescribed docket fees. This, petitioner did not do, because it asserted that its claim for the collection of rental payments was a compulsory counterclaim. Since petitioner failed to pay the docket fees, the RTC did not acquire jurisdiction over its permissive counterclaim. The judgment rendered by the RTC, insofar as it ordered Fernando to pay petitioner the rentals which he collected from CMTC, is considered null and void. Any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court.

3. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS; GOVERNMENT SERVICE INSURANCE SYSTEM; NOT EXEMPT FROM THE PAYMENT OF LEGAL FEES.— In *In Re: Petition for Recognition of the Exemption of the Government Service Insurance System from Payment of Legal Fees*, the Court ruled that the provision in the Charter of the GSIS, *i.e.*, Section 39 of Republic Act No. 8291, which exempts it from "all taxes, assessments, fees, charges or duties of all kinds," cannot operate to exempt it from the payment of legal fees. This was because, unlike the 1935 and 1973 Constitutions, which empowered Congress to repeal, alter or supplement the rules of the Supreme Court concerning pleading, practice and procedure, the 1987 Constitution removed this power from Congress. Hence, the Supreme Court now has the sole authority to promulgate rules concerning pleading, practice and procedure in all courts. In said case, the Court ruled that: "The separation

of powers among the three co-equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court. The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by this Court. Viewed from this perspective, the claim of a legislative grant of exemption from the payment of legal fees under Section 39 of RA 8291 necessarily fails. Congress could not have carved out an exemption for the GSIS from the payment of legal fees without transgressing another equally important institutional safeguard of the Court's independence - fiscal autonomy. Fiscal autonomy recognizes the power and authority of the Court to levy, assess and collect fees, including legal fees. Moreover, legal fees under Rule 141 have two basic components, the Judiciary Development Fund (JDF) and the Special Allowance for the Judiciary Fund (SAJF). The laws which established the JDF and the SAJF expressly declare the identical purpose of these funds to "guarantee the independence of the Judiciary as mandated by the Constitution and public policy." Legal fees therefore do not only constitute a vital source of the Court's financial resources but also comprise an essential element of the Court's fiscal independence. Any exemption from the payment of legal fees granted by Congress to government-owned or controlled corporations and local government units will necessarily reduce the JDF and the SAJF. Undoubtedly, such situation is constitutionally infirm for it impairs the Court's guaranteed fiscal autonomy and erodes its independence.''

4. REMEDIAL LAW; CIVIL PROCEDURE; COMMENCEMENT OF ACTION; PAYMENT OF DOCKET FEES; AS TO ANY CLAIM FOR DAMAGES ARISING AFTER THE FILING OF THE COMPLAINT, THE ADDITIONAL FILING FEE THEREFOR SHALL CONSTITUTE A LIEN ON THE JUDGMENT.— In *Ayala Corporation v. Madayag*, the Court, in interpreting the third rule laid down in *Sun Insurance Office, Ltd. v. Judge Asuncion* regarding awards of claims not specified in the pleading, held that the same refers only to damages arising after the filing of the complaint or similar pleading as to which the additional filing fee therefor shall constitute a lien on the judgment. "The amount of any claim for damages, therefore,

arising on or before the filing of the complaint or any pleading should be specified. While it is true that the determination of certain damages as exemplary or corrective damages is left to the sound discretion of the court, it is the duty of the parties claiming such damages to specify the amount sought on the basis of which the court may make a proper determination, and for the proper assessment of the appropriate docket fees. **The exception contemplated as to claims not specified or to claims although specified are left for determination of the court is limited only to any damages that may arise after the filing of the complaint or similar pleading for then it will not be possible for the claimant to specify nor speculate as to the amount thereof.**" Petitioner's claim for payment of rentals collected by Fernando from the CMTC did not arise after the filing of the complaint; hence, the rule laid down in *Sun Insurance* finds no application in the present case.

APPEARANCES OF COUNSEL

GSIS Legal Services Group for petitioner.
Jorge D. Zerrudo for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1] and the Resolution,[2] dated December 17, 2002 and April 29, 2003, respectively, of the Court of Appeals (CA) in CA-G.R. CV. No. 49300.

The antecedents are as follows:

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong, concurring; *rollo*, pp. 162-172.

[2] *Id.* at 173.

Respondent Fernando C. Caballero (Fernando) was the registered owner of a residential lot designated as Lot No. 3355, Ts-268, covered by TCT No. T-16035 of the Register of Deeds of Cotabato, containing an area of 800 square meters and situated at Rizal Street, Mlang, Cotabato. On the said lot, respondent built a residential/commercial building consisting of two (2) stories.

On March 7, 1968, Fernando and his wife, Sylvia Caballero, secured a loan from petitioner Government Service Insurance System (GSIS) in the amount of ₱20,000.00, as evidenced by a promissory note. Fernando and his wife likewise executed a real estate mortgage on the same date, mortgaging the aforestated property as security.

Fernando defaulted on the payment of his loan with the GSIS. Hence, on January 20, 1973, the mortgage covering the subject property was foreclosed, and on March 26, 1973, the same was sold at a public auction where the petitioner was the only bidder in the amount of ₱36,283.00. For failure of Fernando to redeem the said property within the designated period, petitioner executed an Affidavit of Consolidation of Ownership on September 5, 1975. Consequently, TCT No. T-16035 was cancelled and TCT No. T-45874 was issued in the name of petitioner.

On November 26, 1975, petitioner wrote a letter to Fernando, informing him of the consolidation of title in its favor, and requesting payment of monthly rental in view of Fernando's continued occupancy of the subject property. In reply, Fernando requested that he be allowed to repurchase the same through partial payments. Negotiation as to the repurchase by Fernando of the subject property went on for several years, but no agreement was reached between the parties.

On January 16, 1989, petitioner scheduled the subject property for public bidding. On the scheduled date of bidding, Fernando's daughter, Jocelyn Caballero, submitted a bid in the amount of ₱350,000.00, while Carmelita Mercantile Trading Corporation (CMTC) submitted a bid in the amount of ₱450,000.00. Since CMTC was the highest bidder, it was awarded the subject

property. On May 16, 1989, the Board of Trustees of the GSIS issued Resolution No. 199 confirming the award of the subject property to CMTC for a total consideration of ₱450,000.00. Thereafter, a Deed of Absolute Sale was executed between petitioner and CMTC on July 27, 1989, transferring the subject property to CMTC. Consequently, TCT No. T-45874 in the name of GSIS was cancelled, and TCT No. T-76183 was issued in the name of CMTC.

Due to the foregoing, Fernando, represented by his daughter and attorney-in-fact, Jocelyn Caballero, filed with the Regional Trial Court (RTC) of Kabacan, Cotabato a Complaint[3] against CMTC, the GSIS and its responsible officers, and the Register of Deeds of Kidapawan, Cotabato. Fernando prayed, among others, that judgment be rendered: declaring GSIS Board of Trustees Resolution No. 199, dated May 16, 1989, null and void; declaring the Deed of Absolute Sale between petitioner and CMTC null and void *ab initio*; declaring TCT No. 76183 of the Register of Deeds of Kidapawan, Cotabato, likewise, null and void *ab initio*; declaring the bid made by Fernando in the amount of ₱350,000.00 for the repurchase of his property as the winning bid; and ordering petitioner to execute the corresponding Deed of Sale of the subject property in favor of Fernando. He also prayed for payment of moral damages, exemplary damages, attorney's fees and litigation expenses.

In his complaint, Fernando alleged that there were irregularities in the conduct of the bidding. CMTC misrepresented itself to be wholly owned by Filipino citizens. It misrepresented its working capital. Its representative Carmelita Ang Hao had no prior authority from its board of directors in an appropriate board resolution to participate in the bidding. The corporation is not authorized to acquire real estate or invest its funds for purposes other than its primary purpose. Fernando further alleged that the GSIS allowed CMTC to bid despite knowledge that said corporation has no authority to do so. The GSIS also disregarded Fernando's prior right to buy back his family home

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[3] *Rollo*, pp. 200-207.

and lot in violation of the laws. The Register of Deeds of Cotabato acted with abuse of power and authority when it issued the TCT in favor of CMTC without requiring the CMTC to submit its supporting papers as required by the law.

Petitioner and its officers filed their Answer with Affirmative Defenses and Counterclaim.[4] The GSIS alleged that Fernando lost his right of redemption. He was given the chance to repurchase the property; however, he did not avail of such option compelling the GSIS to dispose of the property by public bidding as mandated by law. There is also no "prior right to buy back" that can be exercised by Fernando. Further, it averred that the articles of incorporation and other papers of CMTC were all in order. In its counterclaim, petitioner alleged that Fernando owed petitioner the sum of ₱130,365.81, representing back rentals, including additional interests from January 1973 to February 1987, and the additional amount of ₱249,800.00, excluding applicable interests, representing rentals Fernando unlawfully collected from Carmelita Ang Hao from January 1973 to February 1988.

After trial, the RTC, in its Decision[5] dated September 27, 1994, ruled in favor of petitioner and dismissed the complaint. In the same decision, the trial court granted petitioner's counterclaim and directed Fernando to pay petitioner the rentals paid by CMTC in the amount of ₱249,800.00. The foregoing amount was collected by Fernando from the CMTC and represents payment which was not turned over to petitioner, which was entitled to receive the rent from the date of the consolidation of its ownership over the subject property.

Fernando filed a motion for reconsideration, which was denied by the RTC in an Order dated March 27, 1995.

Aggrieved by the Decision, respondent filed a Notice of Appeal.[6] The CA, in its Decision dated December 17, 2002, affirmed the decision of the RTC with the modification that the portion

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[4] *Id.* at 72-77.

[5] *Id.* at 190-199.

[6] Records, p. 416.

of the judgment ordering Fernando to pay rentals in the amount of ₱249,800.00, in favor of petitioner, be deleted. Petitioner filed a motion for reconsideration, which the CA denied in a Resolution dated April 29, 2003. Hence, the instant petition.

An *Ex Parte* Motion for Substitution of Party,[7] dated July 18, 2003, was filed by the surviving heirs of Fernando, who died on February 12, 2002. They prayed that they be allowed to be substituted for the deceased, as respondents in this case.

Petitioner enumerated the following grounds in support of its petition:

I

THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN HOLDING THAT GSIS' COUNTERCLAIM, AMONG OTHERS, OF ₱249,800.00 REPRESENTING RENTALS COLLECTED BY PRIVATE RESPONDENT FROM CARMELITA MERCANTILE TRADING CORPORATION IS IN THE NATURE OF A PERMISSIVE COUNTERCLAIM WHICH REQUIRED THE PAYMENT BY GSIS OF DOCKET FEES BEFORE THE TRIAL COURT CAN ACQUIRE JURISDICTION OVER SAID COUNTERCLAIM.

II

THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN HOLDING THAT GSIS' DOCUMENTARY EVIDENCE SUPPORTING ITS CLAIM OF ₱249,800.00 LACKS PROPER IDENTIFICATION.[8]

The petition of the GSIS seeks the review of the CA's Decision insofar as it deleted the trial court's award of ₱249,800.00 in its favor representing rentals collected by Fernando from the CMTC.

In their Memorandum, respondents' claim that CMTC cannot purchase real estate or invest its funds in any purpose other than its primary purpose for which it was organized in the absence

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[7] *Rollo*, pp. 234-285.

[8] *Id.* at 152.

of a corporate board resolution; the bid award, deed of absolute sale and TCT No. T-76183, issued in favor of the CMTC, should be nullified; the trial court erred in concluding that GSIS personnel have regularly performed their official duty when they conducted the public bidding; Fernando, as former owner of the subject property and former member of the GSIS, has the preemptive right to repurchase the foreclosed property.

These additional averments cannot be taken cognizance by the Court, because they were substantially respondents' arguments in their petition for review on *certiorari* earlier filed before Us and docketed as G.R. No. 156609. Records show that said petition was denied by the Court in a Resolution[9] dated April 23, 2003, for petitioners' (respondents herein) failure to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision as to warrant the exercise by this Court of its discretionary appellate jurisdiction.[10] Said resolution became final and executory on June 9, 2003.[11] Respondents' attempt to re-litigate claims already passed upon and resolved with finality by the Court in G.R. No. 156609 cannot be allowed.

Going now to the first assigned error, petitioner submits that its counterclaim for the rentals collected by Fernando from the CMTC is in the nature of a compulsory counterclaim in the original action of Fernando against petitioner for annulment of bid award, deed of absolute sale and TCT No. 76183. Respondents, on the other hand, alleged that petitioner's counterclaim is permissive and its failure to pay the prescribed docket fees results into the dismissal of its claim.

To determine whether a counterclaim is compulsory or not, the Court has devised the following tests: (a) Are the issues of fact and law raised by the claim and by the counterclaim largely the same? (b) Would *res judicata* bar a subsequent suit on

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[9] CA *rollo*, pp. 190-191.

[10] The petition was also denied for lack of proof of the petition on the adverse party and its failure to attach the affidavit of service of copy of the petition on the adverse parties. (*Id.* at 190.)

[11] CA *rollo*, p. 193.

defendant's claims, absent the compulsory counterclaim rule? (c) Will substantially the same evidence support or refute plaintiff's claim as well as the defendant's counterclaim? and (d) Is there any logical relation between the claim and the counterclaim? A positive answer to all four questions would indicate that the counterclaim is compulsory.[12]

Tested against the above-mentioned criteria, this Court agrees with the CA's view that petitioner's counterclaim for the recovery of the amount representing rentals collected by Fernando from the CMTC is permissive. The evidence needed by Fernando to cause the annulment of the bid award, deed of absolute sale and TCT is different from that required to establish petitioner's claim for the recovery of rentals.

The issue in the main action, *i.e.*, the nullity or validity of the bid award, deed of absolute sale and TCT in favor of CMTC, is entirely different from the issue in the counterclaim, *i.e.*, whether petitioner is entitled to receive the CMTC's rent payments over the subject property when petitioner became the owner of the subject property by virtue of the consolidation of ownership of the property in its favor.

The rule in permissive counterclaims is that for the trial court to acquire jurisdiction, the counterclaimant is bound to pay the prescribed docket fees.[13] This, petitioner did not do, because it asserted that its claim for the collection of rental payments was a compulsory counterclaim. Since petitioner failed to pay the docket fees, the RTC did not acquire jurisdiction over its permissive counterclaim. The judgment rendered by the RTC, insofar as it ordered Fernando to pay petitioner the rentals which he collected from CMTC, is considered null and void. Any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court.[14]

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[12] *Manuel C. Bungcayao , Sr., represented in this case by his Attorney-in-fact Romel R. Bungcayao, v. Fort Ilocandia Property Holdings and Development Corporation,* G.R. No. 170483, April 19, 2010.

[13] *Id*.

[14] *Id*.

Petitioner further argues that assuming that its counterclaim is permissive, the trial court has jurisdiction to try and decide the same, considering petitioner's exemption from all kinds of fees.

In *In Re: Petition for Recognition of the Exemption of the Government Service Insurance System from Payment of Legal Fees*,[15] the Court ruled that the provision in the Charter of the GSIS, *i.e.*, Section 39 of Republic Act No. 8291, which exempts it from "all taxes, assessments, fees, charges or duties of all kinds," cannot operate to exempt it from the payment of legal fees. This was because, unlike the 1935 and 1973 Constitutions, which empowered Congress to repeal, alter or supplement the rules of the Supreme Court concerning pleading, practice and procedure, the 1987 Constitution removed this power from Congress. Hence, the Supreme Court now has the sole authority to promulgate rules concerning pleading, practice and procedure in all courts.

In said case, the Court ruled that:

> The separation of powers among the three co-equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court. The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by this Court. Viewed from this perspective, the claim of a legislative grant of exemption from the payment of legal fees under Section 39 of RA 8291 necessarily fails.
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> Congress could not have carved out an exemption for the GSIS from the payment of legal fees without transgressing another equally important institutional safeguard of the Court's independence - fiscal autonomy. Fiscal autonomy recognizes the power and authority of the Court to levy, assess and collect fees, including legal fees. Moreover, legal fees under Rule 141 have two basic components, the Judiciary Development Fund (JDF) and the Special Allowance for the Judiciary Fund (SAJF). The laws which established the JDF and the SAJF expressly declare the identical purpose of these funds

[15] A.M. No. 08-2-01-0, February 11, 2010.

to "guarantee the independence of the Judiciary as mandated by the Constitution and public policy." Legal fees therefore do not only constitute a vital source of the Court's financial resources but also comprise an essential element of the Court's fiscal independence. Any exemption from the payment of legal fees granted by Congress to government-owned or controlled corporations and local government units will necessarily reduce the JDF and the SAJF. Undoubtedly, such situation is constitutionally infirm for it impairs the Court's guaranteed fiscal autonomy and erodes its independence.

Petitioner also invoked our ruling in *Sun Insurance Office, Ltd. v. Judge Asuncion*,[16] where the Court held that:

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3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.

In *Ayala Corporation v. Madayag*,[17] the Court, in interpreting the third rule laid down in *Sun Insurance Office, Ltd. v. Judge Asuncion* regarding awards of claims not specified in the pleading, held that the same refers only to damages arising after the filing of the complaint or similar pleading as to which the additional filing fee therefor shall constitute a lien on the judgment.

The amount of any claim for damages, therefore, arising on or before the filing of the complaint or any pleading should be specified. While it is true that the determination of certain damages as exemplary or corrective damages is left to the sound discretion of the court, it is the duty of the parties claiming such damages to specify the amount sought on the basis of which the court may make a proper

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[16] 252 Phil. 280 (1989).

[17] G.R. No. 88421, January 30, 1990, 181 SCRA 687, cited in *Proton Pilipinas Corporation v. Banque Nationale De Paris*, G.R. No. 151242, June 15, 2005, 460 SCRA 260, 278.

determination, and for the proper assessment of the appropriate docket fees. **The exception contemplated as to claims not specified or to claims although specified are left for determination of the court is limited only to any damages that may arise after the filing of the complaint or similar pleading for then it will not be possible for the claimant to specify nor speculate as to the amount thereof.** (Emphasis supplied.)

Petitioner's claim for payment of rentals collected by Fernando from the CMTC did not arise after the filing of the complaint; hence, the rule laid down in *Sun Insurance* finds no application in the present case.

Due to the non-payment of docket fees on petitioner's counterclaim, the trial court never acquired jurisdiction over it and, thus, there is no need to discuss the second issue raised by petitioner.

WHEREFORE, the petition is *DENIED*. The Decision and the Resolution, dated December 17, 2002 and April 29, 2003, respectively, of the Court of Appeals in CA-G.R. CV. No. 49300, are *AFFIRMED*.

SO ORDERED.

Velasco, Jr.,[*] *Nachura,*[**] *Mendoza,* and *Sereno,*[***] *JJ.*, concur.

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[*] Designated as an additional member in lieu of Senior Associate Justice Antonio T. Carpio, per Special Order No. 897, dated September 28, 2010.

[**] Per Special Order No. 898, dated September 28, 2010.

[***] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 903, dated September 28, 2010.

THIRD DIVISION

[G.R. No. 164186. October 4, 2010]

FINANCIAL BUILDING CORPORATION, *petitioner, vs.* **RUDLIN INTERNATIONAL CORPORATION, BLOOMFIELD EDUCATIONAL FOUNDATION, INC., RODOLFO J. LAGERA, MA. ERLINDA J. LAGERA and JOSAPHAT R. BRAVANTE,** *respondents.*

[G.R. No. 164347. October 4, 2010]

RUDLIN INTERNATIONAL CORPORATION, BLOOMFIELD EDUCATIONAL FOUNDATION, INC., RODOLFO J. LAGERA, MA. ERLINDA J. LAGERA AND JOSAPHAT R. BRAVANTE, *petitioners, vs.* **FINANCIAL BUILDING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45; THE SUPREME COURT IS NOT A TRIER OF FACTS; EXCEPTION; PRESENT IN CASE AT BAR.— While generally, the Court is not a trier of facts, a recognized exception thereto is a situation where the findings of fact of the CA and the trial court are conflicting.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; 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.— Considering that FBC had not completed the corrective/repair works in accordance with the Contract Documents and as approved or certified in writing by the Architect as to its completion, its demand for the payment of the final balance was premature. Under the Letter-Agreement dated June 5, 1986, final payment was subject to reconciliation of their accounts regarding the upgrading and downgrading done

on the project. Obviously, this cannot be complied with unless FBC as the defaulting party completes the repair/corrective works for only then can the actual cost of additives and deductives be determined. 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. When the substandard waterproofing caused extensive damage to the school building, it was incumbent upon FBC to institute at its own expense the proper repairs in accordance with the guaranty-warranty stated in the Construction Agreement. Thus, Rudlin cannot be said to have incurred delay in the reconciliation of accounts, as a precondition for final payment; instead, it is FBC who was guilty of delay by its stubborn refusal to replace or re-execute the defective waterproofing of the subject school building.

3. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; DOCUMENTARY EVIDENCE; PAROL EVIDENCE RULE; EVIDENCE OF A PRIOR OR CONTEMPORANEOUS VERBAL AGREEMENT IS GENERALLY NOT ADMISSIBLE TO VARY, CONTRADICT OR DEFEAT THE OPERATION OF A VALID CONTRACT.— On the issue of the correct total contract price, we hold that Rudlin failed to substantiate its claim that the contract price stated in the Construction Agreement (₱6,933,268.00) was not the true contract price because it had an understanding with FBC's Jaime B. Lo that they would decrease said amount to a mutually acceptable amount. Under the general rule in Section 9 of Rule 130 of the Rules of Court, when the terms of an agreement were reduced in writing, as in this case, it is deemed to contain all the terms agreed upon and no evidence of such terms can be admitted other than the contents thereof. Rudlin argues that under Section 9, Rule 130, a party may present evidence to modify, explain or add to the terms of the written agreement if it is put in issue in the pleading, "[t]he failure of the written agreement to express the true intent and the agreement of the parties thereto." Assuming as true Rudlin's claim that Exhibit "7" failed to accurately reflect an intent of the parties to fix the total contract price at ₱6,006,965.00, Rudlin failed to avail of its right to seek the reformation of the instrument to the end that such true intention may be expressed. Pursuant to Section 9 of Rule 130 of the Rules of Court, [e]vidence of

a prior or contemporaneous verbal agreement is generally not admissible to vary, contradict or defeat the operation of a valid contract.

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR.— Rudlin cannot invoke the exception under (a) or (b) of x x x [Section 9 of Rule 130 of the Rules of Court]. Such exception obtains only where "the written contract is so ambiguous or obscure in terms that the contractual intention of the parties cannot be understood from a mere reading of the instrument. In such a case, extrinsic evidence of the subject matter of the contract, of the relations of the parties to each other, and of the facts and circumstances surrounding them when they entered into the contract may be received to enable the court to make a proper interpretation of the instrument." Under the fourth exception, however, Rudlin's evidence is admissible to show the existence of such other terms agreed to by the parties after the execution of the contract. But apart from the Bar Chart and Cash Flow Chart prepared by FBC, and the testimony of Rodolfo J. Lagera, no competent evidence was adduced by Rudlin to prove that the amount of ₱6,006,965.00 stated therein as contract price was the actual decreased amount that FBC and Rudlin found mutually acceptable. As to the affidavits executed by Architect Quezon and his associate Roberto R. Antonio, the same do not serve as competent proof of the purported actual contract price as they did not testify thereon. Significantly, the June 5, 1986 Letter-Agreement did not at all mention the total contract price. Likewise, there is nothing in the various letters sent by Rudlin to FBC while construction was in progress and even subsequent to the execution of the said Letter-Agreement indicating that Rudlin corrected the contract price of ₱6,933,268.00 which FBC had repeatedly mentioned in its letters and documents.

5. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; MUST BE BASED ON THE EVIDENCE PRESENTED.— As to Rudlin's counterclaim for reimbursement of its expenses in repairing the defective waterproofing, not a single receipt was presented by Rudlin to prove that such expense was actually incurred by it. Under the Civil Code, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. The award of actual damages must be based on the evidence presented, not on the personal knowledge of

the court; and certainly not on flimsy, remote, speculative and nonsubstantial proof. The testimony of Rodolfo J. Lagera on the total cost allegedly spent by Rudlin in repairing the waterproofing works does not suffice. A court cannot rely on speculations, conjectures or guesswork as to the fact of damage but must depend upon competent proof that they have indeed been suffered by the injured party and on the basis of the best evidence obtainable as to the actual amount thereof. It must point out specific facts that could provide the gauge for measuring whatever compensatory or actual damages were borne.

6. ID.; ID.; ATTORNEY'S FEES; WHEN AWARDED.— We have stressed that the award of attorney's fees is the exception rather than the rule, as they are not always awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees as part of damages is awarded only in the instances specified in Article 2208 of the Civil Code.

APPEARANCES OF COUNSEL

Jimenez Gonzales Liwanag Bello Valdez Caluya & Fernandez for Financial Building Corp.

Villaraza & Angangco Law Offices for Rudlin International.

D E C I S I O N

VILLARAMA, JR., *J.*:

The present consolidated petitions for review under Rule 45 assail the Decision[1] dated December 12, 2003 of the Court of Appeals (CA) in CA-G.R. CV No. 41224 which affirmed with modification the Decision[2] dated January 12, 1993 of the Regional Trial Court (RTC) of Makati City, Branch 65 in Civil Case No. 16266.

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[1] CA *rollo*, pp. 831-854. Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Eubulo G. Verzola and Edgardo F. Sundiam (now deceased).

[2] Records, pp. 1135-1139. Penned by Judge Salvador S. Abad Santos.

The Facts

Sometime in October 1985, Rudlin International Corporation (Rudlin) invited proposals from several contractors to undertake the construction of a three-storey school building and other appurtenances thereto at Vista Grande, BF Resort Village, Las Piñas, Metro Manila. The contract was eventually awarded to Financial Building Corporation (FBC), with a bid of ₱6,933,268.00 as total project cost. On November 22, 1985, Rudlin represented by its Chairman of the Board and President Rodolfo J. Lagera, and FBC represented by its Vice-President and Treasurer Jaime B. Lo, executed a Construction Agreement[3] which, among others, provided for the total consideration and liability for delay as follows:

SECTION FOUR
CONTRACT PRICE

The OWNER agrees to pay the CONTRACTOR, for the work stated in Section Two hereof, the total price of SIX MILLION NINE HUNDRED THIRTY THREE THOUSAND TWO HUNDRED SIXTY EIGHT PESOS (₱6,933,268.00) in accordance with Section five et seq. Payment of this amount is subject to additions or deductions in accordance with the provisions of this Agreement and of the other documents to which this Agreement is made subject to.[4]

x x x x x x x x x

SECTION TWELVE
TIME OF ESSENCE; EXTENSION OF TIME

Time is of the essence in this Agreement and any delay not due to *force majeure* will result in injury and damage to the OWNER in view of which it is hereby stipulated that, in the completion of the work, the CONTRACTOR shall be liable to the OWNER in the sum equivalent to 1/10 of 1% of the total contract price for every calendar day of delay (Sundays and Legal Holidays included). Any sums accruing in favor of the OWNER under this provision shall be

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[3] *Id.* at 578-598.

[4] *Id.* at 581.

deductible from the stipulated Contract Price or any balance thereof due to the CONTRACTOR.[5]

The contract also provided for completion date not later than April 30, 1986 unless an extension of time has been "authorized and approved by the OWNER and the ARCHITECT in writing."[6] It appears that the construction was not finished on said date as Rudlin wrote FBC to complete the project not later than May 31, 1986, except for the administration wing which Rudlin expected to be turned over to it "100% complete by June 10, 1986."[7]

On June 5, 1986, Rudlin and FBC made amendments to their Construction Agreement dated November 22, 1985 through a Letter-Agreement[8] signed by Rodolfo J. Lagera and Jaime B. Lo, as follows:

1. Financial Building Corporation ("FBC") shall complete and deliver the Project to Rudlin International, Inc. ("RII") **on or before 10 June 1986.**

2. Payment of the balance due on the contract price shall be made **after the parties have reconciled their accounts with regard to the upgrading and downgrading of the work done on the Project**, which reconciliation shall be settled not later than 30 June 1986.

3. RII shall pay FBC the unpaid balance as determined under paragraph 2 hereof, under the following terms and conditions:

(a) RII shall pay FBC an additional payment of Two Hundred Fifty Thousand Pesos (₱250,000.00) upon signing hereof, receipt of which is hereby acknowledged. This is in addition to the Two Hundred Fifty Thousand Pesos (₱250,000.00) paid on 29 May 1986.

(b) The rest of the unpaid balance shall be payable within a period of ninety (90) days from the date the said balance is determined in accordance with paragraph 2 hereof, adequately

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[5] *Id.* at 592.

[6] *Id.* at 580.

[7] *Id.* at 622.

[8] *Id.* at 602-603.

secured by post dated checks and the same to earn interest at the prevailing bank rates. There shall be a moratorium of thirty (30) days, the payments to be made in accordance with the following schedule:

On or before 15 July 1986	-	25%
On or before 31 July 1986	-	25%
On or before 15 August 1986	-	25%
On or before 31 August 1986	-	25%
TOTAL PAYMENTS DUE	-	100%

This Letter-Agreement amends the corresponding provisions of the Construction Agreement dated 22 November 1985, except that Section 12 thereof is hereby waived.[9] (Emphasis supplied.)

On June 15, 1986, the subject school building, "Bloomfield Academy," was inaugurated and utilized by Rudlin upon the start of the school year. From the exchange of correspondence between FBC and Rudlin, it can be gleaned that no reconciliation of accounts took place pursuant to the Letter-Agreement dated June 5, 1986. FBC demanded payment of the balance of the adjusted contract price per its computation, but it was not heeded by Rudlin.

On March 10, 1987, FBC filed in the RTC a suit for a sum of money with prayer for preliminary attachment against Rudlin, Bloomfield Educational Foundation, Inc. (Bloomfield) and their officers, directors or stockholders, namely: Rodolfo J. Lagera, Ma. Erlinda J. Lagera and Josaphat R. Bravante. FBC alleged that the total and final contract price, inclusive of additives and deductives which are covered by valid documents, is ₱7,324,128.44; that Rudlin paid FBC only ₱4,874,920.14, thus leaving a balance of ₱2,449,208.30; and that despite repeated demands by FBC, Rudlin refused to pay its obligations. FBC further prayed for legal interest on the amount of ₱2,449,208.30 from the time it became due and demandable, attorney's fees equivalent to 25% of the total amount due, moral and exemplary damages and the cost of suit.[10]

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[9] *Id.*

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

The trial court granted the prayer for preliminary attachment but before the sheriff could implement the writ issued by the court, Rudlin filed the proper counter bond.

In their Answer with Counterclaim,[11] defendants denied the allegations of the complaint. Rudlin averred that the Construction Agreement did not reflect the true contract price agreed upon, which is ₱6,006,965.00. The amount of ₱6,933,268.00, which is FBC's bid price, was indicated in the Construction Agreement solely for the purpose of obtaining a higher amount of loan from the Bank of Philippine Islands (BPI). The execution of said document was made with the understanding between FBC and Rudlin that the contract price stated therein would be decreased to a mutually acceptable contract price. However, due to inadvertence, the parties forgot to sign an agreement fixing the true contract price.

Rudlin also denied that the construction of the project was completed by FBC. The original completion date, April 30, 1986, was later moved to June 10, 1986. But despite the extension given by Rudlin, FBC still has not completed the project. Neither did FBC deliver to Rudlin a complete release of all liens arising out of the Construction Agreement or receipts in full in lieu thereof, as well as an affidavit that the releases and receipts include all the labor, interests and equipment for which a claim or action can be filed, as required under Section Eight of the Construction Agreement. In fact, for non-payment by FBC of one of its sub-contractors, Rudlin was sued as a co-defendant with FBC in Civil Case No. 15734 pending before the RTC of Makati, Branch 138.

Rudlin likewise claimed that many portions of the work performed by FBC are incomplete and/or faulty, defective and deficient (valued at ₱1,180,127.35), for which reason Architect Eduardo R. Quezon has not certified on the full performance and completion of the project. The work done by FBC was thus not accepted by Rudlin for valid reasons. Rudlin had already paid FBC the total amount of ₱5,564,219.58. After considering

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[11] *Id.* at 96-110.

the 10% retention money and the value of additives and deductives, Rudlin had actually overpaid FBC by ₱415,701.34. Clearly, Rudlin does not owe FBC the amount stated in its Complaint; FBC likewise had sent a final demand letter dated March 2, 1987 to Rudlin which mentioned only the amount of ₱115,000.00 as Rudlin's outstanding accountability.

As to Bloomfield and the individual defendants, they contended that not being parties to the Construction Agreement, FBC has no cause of action against them. Moreover, in their dealings with FBC, they acted with justice, honesty and good faith.

Under its counterclaim, Rudlin invoked the provision in the Construction Agreement granting the Owner the right to terminate the contract and take over the construction works upon default of the Contractor who abandons or fails to complete the project, or fails to carry out the work in accordance with the provisions of the Contract Documents, and to deduct the costs from whatever payment is due or to become due to the Contractor. Rudlin asserted that despite demands it made upon FBC, the latter still failed and refused to complete and make good its obligations under the Construction Agreement and to correct faulty and defective works.

In its Reply,[12] FBC asserted that the demand letter dated March 2, 1987 pertains to another account of Rudlin. FBC asserted that its failure to deliver releases of some liens was due to Rudlin's failure to pay the amount claimed in the complaint. At any rate, by the very fact that Rudlin is actually making use of the school building constructed by FBC, it is deemed to have accepted the work.

By agreement of the parties, the trial court appointed three Commissioners to resolve factual issues pertaining to the construction of the subject building, specifically the following:

1) Adherence or non-adherence to the plan and specifications;

2) Additives, deductives, defects and faults in the construction; [and]

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

3) Completion or non-completion of the project.[13]

The Commissioners conducted ocular inspection of the subject school building on February 23, 1988, March 6, 1988, March 12, 1988, April 25, 1988, April 26, 1988 and May 12, 1988.[14] On September 28, 1989, they submitted a detailed report on their findings and conclusions, including the additives (modifications and additional works, the value of which are to be reimbursed by the Owner) and deductives (deficiencies and cost of repairs done by the Owner and other expenses which shall be deducted from the contract price due to the Contractor).[15] FBC submitted its comments on the said report denying any responsibility for the alleged defects and deficiencies found by the commissioners and insisting that it had fully performed all the works in accordance with the plans, specifications and modifications as approved by Rudlin.

During the trial, the following witnesses testified: Jaime Beltran Lo, Alexander E. Reyes, Gregorio P. Pineda, Rodolfo J. Lagera, Teresita L. Ngan Tian, Carolina F. Bodoy, and the court-appointed commissioners Engr. Alberto R. Payumo, Architect Agaton R. Sabino and Edmundo B. Flores.

Ruling of the RTC

In its decision,[16] the trial court concluded that as shown by the Commissioners' Report, the subject school building had several defects. It found untenable FBC's denial of any responsibility for the defects caused by the inferior quality of waterproofing material used by its subcontractor, INDESCO, citing Section Eleven of the Construction Agreement whereby the Contractor assumes full responsibility for the acts, negligence or omissions of all its employees, as well as for those of its subcontractor and the latter's employees. Moreover, the

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[13] *Id.* at 392.

[14] *Id.* at 290-371.

[15] *Id.* at 392-418.

[16] *Id.* at 1135-1139.

modifications to the original plans and specifications, which gave rise to the deductives and additives, were not shown to have been approved by Rudlin nor concurred in by the project Architect, contrary to FBC's allegation.

The trial court thus decreed:

> In view of the foregoing, the complaint against defendant Rudlin is dismissed. Considering that defendant Bloomfield Educational Foundation was not a party to the Construction Agreement, the complaint against the latter is dismissed. Plaintiff having failed to prove that defendants Rodolfo Lagera, Ma. Erlinda Lagera and Josaphat Bravante acted in their personal capacities, the complaint against them is likewise dismissed.
>
> There being bad faith on the part of defendant Rudlin in that it deliberately failed to disclose the true contract price, defendants' counterclaim is dismissed.
>
> No pronouncement as to costs.
>
> SO ORDERED.[17]

Both FBC and Rudlin filed notices of appeal.

Ruling of the CA

While the CA upheld the dismissal of the complaint as against the individual defendants and Bloomfield, it found that FBC was able to substantiate its claim against Rudlin for the unpaid balance of the contract price of ₱6,933,268.00 (not ₱6,006,965.00), which after considering the additives and deductives, the direct payment made by Rudlin, cost of chargeable materials and rebates, would still leave the amount of ₱1,508,464.84 due to FBC based on the Summary of Contract Revisions and Unpaid Balances on which Gregorio P. Pineda testified.[18]

According to the CA, if not for the alleged construction defects and supposed additives and deductives, Rudlin could have

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[17] *Id.* at 1139.

[18] CA *rollo*, pp. 831-854.

considered the building "complete", as in fact the school building is already being used as such by Rudlin. In resolving the issues pertinent to said construction defects, the CA declared that it cannot rely solely on the Commissioners' Report considering that the commissioners who tried to explain their "conclusions" contained in the said report testified that these were made "not exactly what they actually intended to report." The CA then grouped the defects noted by the commissioners during the ocular inspection as follows: (1) the defect in the waterproofing of the gutter and the water stains and delamination of plywood and tiles reasonably presumed as caused by the water seepage; (2) the hairline cracks on walls, beams and floors; (3) the cracks which extend to the outer portion of the walls; (4) cracks on the floors; (5) the gap between the inner wall and the beams at the conference room; (6) missing components such as tiles, door locksets and cold water knob. Based on the testimonies of Commissioners Sabino and Payumo, the CA observed that the causes of the foregoing defects were not fully established; that these may be considered as either ordinary defects due to wear and tear or construction defects, depending on the interpretation that a party would like to adopt; and the commissioners who testified had admitted that they themselves were not certain of the "causes" and were merely stating their respective opinions on the possible causes of the noted defects.

Analyzing the evidence on record, the CA concluded that FBC was not liable for the defect in waterproofing and delay in the completion of the works for the following reasons: (1) the changing of the brand of the waterproofing used in the gutter was fully discussed during the regular meeting between the representatives of FBC and Architect Quezon; it was in fact Josaphat Bravante who selected the subcontractor and the brand of the waterproofing to be used; (2) there was no convincing proof that FBC failed to supervise the performance of said subcontractor chosen by Rudlin; (3) Gregorio P. Pineda who was present during the aforesaid meetings was competent to testify on the preparation of the minutes of the meetings (Exhibits "EE" and "GG" to "WW"), pursuant to which the additives and deductives were made, and that Rudlin's silence on this

matter only supports such a conclusion; (4) Rudlin's claim that it undertook repairs on the defects in the construction for which the amount of ₱350,000.00 was supposedly spent, was not supported by any receipt or concrete evidence other than the self-serving testimony of Rodolfo J. Lagera; (5) there was no formal walk-through made and certification by the architect because Architect Quezon ignored FBC's letter requesting the said final walk-through, the relationship between the parties at that time having turned sour; and (6) Rudlin's reliance on Section Twelve of the Construction Agreement is misplaced, the Letter-Agreement dated June 5, 1986 shows that the parties agreed for a new date of completion of the school building and the schedule of payment of the remaining construction price.

The CA thus ordered Rudlin to pay FBC the remaining balance of ₱1,508,464.84.[19]

Rudlin filed a motion for reconsideration while FBC moved for partial reconsideration of the CA decision. The CA denied both motions under its Resolution dated June 23, 2004.[20]

The Cases

Petitioner FBC in G.R. No. 164186 seeks modification of the CA Decision insofar as it failed to include legal interest on the amount which Rudlin was adjudged still liable to pay FBC (₱1,508,464.84) and attorney's fees and litigation expenses equivalent to 25% of the total award. FBC likewise prays that the individual defendants and Bloomfield be declared solidarily liable with Rudlin.[21]

In G.R. No. 164347, petitioner Rudlin contends that the CA resolved the issues of the case in a way that is not in accord with the law and applicable jurisprudence and contradicted by the evidence on record. In particular, Rudlin assails the CA in perfunctorily denying its Motion for Reconsideration dated

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[19] *Id.* at 853.

[20] *Id.* at 1090-1093.

[21] *Rollo* (G.R. No. 164186), pp. 22-40.

January 7, 2004; in not finding that petitioners fully substantiated their assertion that the Construction Agreement is not reflective of the true intent of the parties; in not finding that Bloomfield Academy Building was not actually completed as scheduled in violation of the Construction Agreement and causing Rudlin to spend ₱350,000.00 for the same; in not declaring — as correctly found by the trial court – that FBC is liable for the defects in the waterproofing since the change in waterproofing specifications was not approved by Rudlin nor concurred in by the Project Engineer, and that some modifications to the original plans and specifications which gave rise to the additives and deductives were not approved by Rudlin nor concurred in by the Project Engineer; and in not holding that Rudlin's claim for damages by reason of delay is with legal and factual basis.[22]

From the foregoing, the issues to be resolved are: (1) whether FBC is liable for the defects in the construction of the subject school building and delay in the completion of the works; (2) after considering the payments, deductives and additives and other charges admitted, whether Rudlin is still liable for the balance of the contract price and the amount thereof; and (3) whether Rudlin is entitled to its counterclaim.

Our Ruling

The resolution of these cases calls for a reexamination of facts. While generally, the Court is not a trier of facts, a recognized exception thereto is a situation where the findings of fact of the CA and the trial court are conflicting.[23]

Contrary to the findings of the appellate court, we hold that the facts on record clearly established FBC's liability for the defects and deficiencies so numerous that it took several days for the court-appointed commissioners to complete the ocular inspection. The CA tried to minimize the impact of such findings

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[22] *Rollo* (G.R. No. 164347), pp. 36-38.

[23] *Continental Cement Corp. v. Filipinas (PREFAB) Systems, Inc.*, G.R. Nos. 176917 & 176919, August 4, 2009, 595 SCRA 215, 224-225, citing *Santos v. Lumbao*, G.R. No. 169129, March 28, 2007, 519 SCRA 408.

by declaring that the Commissioners' Report cannot be the sole basis for determining whether FBC faithfully complied with all its undertakings and obligations under the Construction Agreement. However, the glaring fact remains that there were construction defects which have been described in detail under each inspection date. While it is true that the commissioners who testified gave different opinions as to whether the noted defects and deficiencies were due to substandard materials and poor workmanship or the same was just the result of ordinary wear and tear and even lack of maintenance, the court can properly evaluate the common findings and conclusions reflected in the Commissioners' Report based on the totality of evidence.

Perusing the records, we are unable to agree with the appellate court's view that the testimonies given in court by the commissioners had left uncertain the determination of the nature of the defects and deficiencies, *i.e.*, whether these are construction defects or merely due to improper maintenance.

First, it stands undisputed that the damage wrought by water seepage causing water stains, leaking roofs, peeling off of paint, cracks on walls and delamination of plywood, among others, was so pervasive on many portions of the building that even after the same was inaugurated in time for the school opening on June 15, 1986, most of the classrooms and administrative offices, as well as other common areas such as the lobby and comfort rooms, could not be properly utilized as their defective condition posed danger to the teachers and students. It must be noted that at the time of ocular inspection in 1988, it was barely two years from the time the building was actually used and yet the overall structure of the building was severely impaired by the defective waterproofing and other deficiencies. Prior to the court-authorized inspection, those visible defects had been photographed under the supervision of Rodolfo J. Lagera, which further confirmed the findings of the commissioners.[24] The CA thus erred in giving weight to FBC's claim that the seepage of water into the beams, walls and floor can be attributed to lack

[24] Records, pp. 1259-1280.

of proper maintenance, citing the declarations of FBC's Alexander E. Reyes and Commissioner Payumo who allegedly found "piles of dirt collected on the gutter and when the dirt was removed, the water flowed down to the spout." Given the extent of the defects and deficiencies found in the school building, this simplistic explanation from FBC is unacceptable.

Although Commissioner Sabino testified that it was possible that the water seepage was caused by the clogging of the downspout due to lack of maintenance in clearing the gutter of dirt, Commissioner Payumo, an engineer, testified that whether the building is properly maintained on that aspect does not really matter because good waterproofing should always hold and prevent seepage whenever there is accumulation of rainwater in the gutter of the roof. Engr. Payumo stated that waterproofing should hold for a period of at least five years:

ATTY. FERNANDEZ (continuing)

Q In other words, Mr. Witness, from what you saw, the water proofing there was for poor maintenance, the owner did not remove the dirt.

A No sir, because if the water proofing is good, it should not fade *[sic, should read as fail]*.

x x x x x x x x x

ATTY. AUTEA: (TO WITNESS)

Q **Based on the standard of practice on the construction industry, how long should a water proofing** pool *[sic, should read as* ***hold****]?*

x x x x x x x x x

WITNESS

A **The practice is about five (5) years**.

COURT:

Q Before the water proofing fail?

A Yes, your Honor.[25] (Emphasis supplied.)

[25] TSN, August 1, 1991, p. 40; TSN, June 27, 1991, pp. 19-20.

We thus cannot agree with the CA's stance that in view of the disagreement expressed by the commissioners in their testimonies, it would be unjust to hold FBC responsible for the substandard waterproofing. The following conclusions set forth in the Commissioners' Report are categorical in declaring the omissions, deviations and negligence of the Contractor (FBC) in the execution of the construction project, to wit:

1. The subject construction project, *i.e.*, Bloomfield Academy located at Wilfredo Tecson Avenue, Vista Grande, BF Resort Village, Las Pinas, Metro Manila, has been completed with a lot of deficiencies and defects in the work.

2. There were additives and deductives done without proper and formal approval from any of the parties.

3. **There was no formal approved cost adjustments nor contract time for the additive and deductive works.**

4. There were portions of the subject construction project that [were] not in accordance [with] the agreed plans and specifications.

5. There were **no formal request nor approval for some deviations from the plans and specifications from the owners nor from the Architect.**

6. **There were several portions of the subject construction project that we found defective and below standards** which were found during the ocular inspection done by the Commissioners and [were] reflected in the stenographic report.

7. **Some deficiencies and defects in the works and the punchlist of Architect [were] not acted upon nor any repairs made to date as required under the contract prior to acceptance.**

8. **Some items in the Architect's punchlist although repaired and acted on [were] never formally turned over nor accepted.**

9. There was no contract time adjustment on the lapsed contract time for the original contract and for the additional works done.

10. There **was no formal turn-over made by the contractor nor acceptance on the part of the owner of the project.**

11. There are provisions in the contract that were violated or have not been followed by the contractor in his performance of the project like the non-submittal of the various bonds (Section 16, M and N) and other contract documents needed in the execution of the contract as some of the findings of the commissioner in the investigation.[26] (Emphasis supplied.)

The CA, however, declared that notwithstanding the damage caused by water seepage, Rudlin cannot claim that the building was not completed and that the only reason which could have justified Rudlin's refusal to pay the balance is the liability of FBC for changing the specified waterproofing brand from John Mans Ville to Neo-pren Elastomeric. The CA thus ruled:

... it appears beyond cavil that *the changing of the brand of the waterproofing used in the gutter was fully discussed during the regular meeting between the representatives of plaintiff-appellant FBC and Architect Quezon. In fact, it was the defendant-appellant Rudlin through defendant-appellant Josaphat Bravante who selected the sub-contractor and the brand of waterproofing to be used in the gutter*. As the general contractor, plaintiff-appellant FBC was only duty bound to supervise the performance of the sub-contractor and see to it that the proper procedure was properly followed. In the absence of any convincing proof that plaintiff-appellant FBC failed to supervise the performance of the sub-contractor, it is highly unjust on the part of plaintiff-appellant FBC to be held liable and even be required to re-do the whole work using the original specified brand at its own expense. A contrary ruling would lead to a scenario where the owner of the subject building would start imposing the use of cheaper materials to save money because after all when the substituted materials fail, the contractor can nevertheless be held liable.[27] (Italics supplied.)

We do not agree. The purported minutes of meetings, wherein the modifications to the original plans and specifications,

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[26] *Id.* at 417.

[27] CA *rollo*, pp. 848-849.

particularly the change of waterproofing were allegedly discussed and approved by Rudlin's representative in the person of Josaphat Bravante (Exhibits "EE" and "GG" to "WW"[28]), were not given credence by the trial court as these actually showed that not all such modifications have been approved. Moreover, the trial court held that FBC failed to prove their due execution and authenticity. But the CA reversed the trial court and held that witness Gregorio P. Pineda who was present in the said meetings was competent to testify on the contents and due execution of the aforesaid Exhibits "EE" and "GG" to "WW".

Even assuming *arguendo* that the change in waterproofing brand was indeed taken up during a meeting in the presence of Rudlin's representative, we cannot agree with the CA's position that the alleged verbal assent by Josaphat Bravante in the purported minutes of meetings[29] was sufficient evidence of the Owner's approval of the modifications in the original plans and specifications. Likewise, the letter dated July 7, 1986[30] of FBC's project engineer Alexander E. Reyes informing Architect Quezon that the change in waterproofing brand was approved by Bravante is at best, self-serving, and the same does not bind Rudlin.

Under Section Nine of the Construction Agreement, Architect Quezon, as representative of the Owner, is the one vested with the general supervision and direction of the work and who is authorized to "reject work which does not conform to the Contract Documents" and to formally stop such work or a portion thereof when necessary.[31] More explicitly, Section Ten of the same agreement provides that the Owner shall give *all* instructions to the Contractor through the Architect.

FBC therefore cannot escape liability for the poor quality of waterproofing on the ground that Rudlin's representative was

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[28] Records, pp. 710-711, 714-739.

[29] Except for Exhibit "EE", all the rest (Exhibits "GG" to "WW") were unsigned by Architect Quezon and Rudlin.

[30] Records, p. 660.

[31] Section Nine (a) and (f), records, pp. 1228-1229.

present during the meeting when the change in brand to be used was allegedly discussed with his concurrence. The requirements for a valid change or modification in the original plans and specifications were clearly set out in Section Fifteen of the Construction Agreement, which provides:

SECTION FIFTEEN
WORK CHANGES

The OWNER reserves the right to order work changes in the nature of additions, deletions, or modifications, without invalidating this Agreement. **All changes shall be authorized by a written change order signed by the OWNER and by the ARCHITECT.**

Work shall be changed, and the completion time shall be modified only as set out in the written change order. **Any adjustment in the Contract Price resulting in a credit or a charge to the OWNER shall be determined by written agreement of the parties, before starting the work involved in the change**.[32]

As it is, the modification effected by FBC on waterproofing work was never approved in writing by Architect Quezon and Rudlin. Contrary to the appellate court's declaration that Rudlin by its silence impliedly approved the change in waterproofing brand, the letter dated September 1, 1986 of Architect Quezon to Jimmy Lo deplored the unauthorized change in the specified brand exacerbated by defective application, and required FBC to re-do such work. Said letter reads:

DEAR JIMMY,

SOMETIME IN JUNE 1986, OUR GROUP DISCUSSED IN ADVANCE WITH MS. LINDA LAGERA, THE POSSIBILITY OF LEAKS IN THE PROJECT, DUE TO CHANGE IN OUR SPECIFICATIONS. WE ALSO ASKED ENGR. ALEX REYES TO WRITE US OFFICIALLY REGARDING **CHANGE ON WATERPROOFING SPECIFICATIONS AND SUBSTITUTION OF ANOTHER BRAND WITHOUT OUR APPROVAL**. THE SPECIFIED BRAND IS BIRD & SONS OR JOHNS MANVILLE AGAINST NEOPRENE AS SUBSTITUTE, A PRODUCT WHICH WE ARE NOT USE TO.

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[32] Records, p. 1238.

YOUR ENGINEER CLAIMS THAT THEY WERE ASKED TO MADE CHANGES BY MR. PAT BRAVANTE AS PART OF THE DOWNGRADING OF THE PROJECT, BUT SOMEHOW ERRORS WERE MADE IN THE EXECUTION OF THE WORK. THE SITUATION IS NOW HOPELESSLY SNARLED. DUE TO MANY LEAKS IN THE PROJECT, ESPECIALLY AT THE ADMINISTRATION AREA AND LEAVING US WITHOUT ASSURANCE ON YOUR PART ON THE CORRECTIVE MEASURE OF THIS PROBLEM.

THIS REQUIRE URGENT ACTION ON YOUR SIDE **TO RE-DO ALL WATERPROOFING WORKS, USING OUR SPECIFICATIONS WITHOUT ANY EXPENSE TO THE OWNER AS PART OF THE GENERAL CONDITIONS OF THE CONTRACT DOCUMENT.** ANYTHING YOU CAN DO TO EXPIDITE *(sic)* CORRECTION OF THE ERROR ON THE PROJECT WILL BE GREATLY APPRECIATED.[33] (Emphasis supplied.)

At this point, it bears to stress that the June 5, 1986 Letter-Agreement signed by both FBC and Rudlin, which extended the completion time to June 10, 1986 expressly amended *only* the corresponding provisions of the Construction Agreement pertaining to completion date and schedule of payment of the balance due to FBC, which was conditioned on the reconciliation of the upgrading and downgrading of the work done by the contractor. Said Letter-Agreement did not relieve FBC as contractor of responsibility for defects under its warranties under the Construction Agreement, which include those works performed by its subcontractor. The pertinent provisions of the Construction Agreement showed that FBC was obligated to correct and/or re-execute defective work before and after final payment, pursuant to its general warranties as contractor, thus:

SECTION FOURTEEN
CORRECTING WORK

1. BEFORE FINAL PAYMENT

The CONTRACTOR shall promptly remove from the premises all works and materials condemned by the ARCHITECT as failing

[33] *Id.* at 1281.

to conform with the Contract Documents, whether incorporated in the work or not, and **the CONTRACTOR shall promptly replace and reexecute the work in accordance with the Contract Documents and without expense to the OWNER.**

If the CONTRACTOR does not remove such condemned work and materials within a reasonable time fixed by the written notice, the OWNER may remove them and may store the materials at the expense of the CONTRACTOR. If the CONTRACTOR does not pay the expenses for such removal within ten (10) days, the OWNER may, after written notice to the CONTRACTOR, sell such materials at auction or at a private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the CONTRACTOR. This does not preclude other actions or remedies which the OWNER may have against the CONTRACTOR.

2. AFTER FINAL PAYMENT

Neither the final certificate for payment nor any provision in the Contract Documents shall relieve the CONTRACTOR of responsibility for faulty materials or workmanship**. It shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within the specified guaranty period.** All questions arising under this provision shall be subject to arbitration in case of failure of the parties to arrive at an agreement.

x x x x x x x x x

SECTION SIXTEEN
GUARANTY-WARRANTY

The CONTRACTOR shall, in case of work performed by its subcontractors, secure warranties from said subcontractors and deliver copies of the same to the ARCHITECT or OWNER upon completion of the work.

The CONTRACTOR shall and does hereby warrant and guarantee the following:

(a) **All works, for a period of one (1) year from the date of completion as evidenced by the date of final acceptance in writing of the entire work by the OWNER.**

(b) **All work performed by it directly or performed by its sub-contractors, shall** be **free from any defects of materials and workmanship.**

(c) The CONTRACTOR further agrees that it will, **at its own expense, repair and/or replace all such defective materials or work, and all other work damaged thereby which becomes defective during the term of this Guaranty-Warranty.** (Emphasis supplied.)

The above-stipulated period of warranty has not even commenced considering that even if Bloomfield proceeded with the inauguration in time for the opening of classes, there was no formal turn over of the building to Rudlin and no final acceptance *in writing* was made by Rudlin. FBC faulted Architect Quezon whose alleged absence and refusal to meet with their officers and to conduct the final walk-through, prevented it from having the building formally turned over to the Owner. Such contention is unfounded because the evidence on record reveals that it was FBC which defaulted on its obligations under the Construction Agreement. FBC is bound by its undertaking under Section Fourteen (1) to replace and re-execute defective waterproofing and correct the damage such had caused to the structure and finishing of the building.

In a letter dated September 17, 1986 addressed to FBC's lawyer, Rudlin's lawyer responded to FBC's demands for payment, as follows:

We write in behalf of our client, RUDLIN INTERNATIONAL, INC., in reply to your letter dated 20 August 1986 and the letter of your client, Financial Building Corporation (FBC) dated 12 August 1986, regarding your client's alleged remaining balance with our client under the above-captioned Agreement.

We would like to remind your client that **our client has not yet accepted the Project nor has Architect Eduardo R. Quezon certified that FBC has fully performed and completed the Project.** Neither has your client delivered to our client a complete release of all liens arising out of the Agreement or receipts in full in lieu thereof, and an affidavit that the releases and receipts include all

the labor, interests and equipment for which a claim or action can be filed, as required under Section Eight of said Agreement. We would also like to call your attention to the letter of Architect Quezon to our client dated 10 September 1986, a copy of which is attached as Annex "A", enumerating therein what your client has to submit/ furnish, and pay our client before any final payment is made by our client to your client.

Further, we would like to inform you that **the uncompleted and/ on faulty work, defects and deficiencies in the Project which were enumerated in the Punch List dated 27 June 1986 and received by FBC on 30 June 1986, have not been completed and/or corrected by FBC.** Our client requested said Architect Quezon to update the same. We are forwarding to you a copy of the updated Punch List dated 10 September 1986 which is attached hereto as Annex "B". Moreover, your client should visit the Project to see, among other things, how the administrative offices, library, chapel and classrooms get flooded when it rains. This situation poses a hazard to the health and life of the students, teachers and staff of Bloomfield Academy.

Moreover, based on the Updated Tabulation Report of Architect Eduardo R. Quezon in relation to his Additive and Deductive Evaluation Report, a copy of which is attached as Annex "C", it appears that **whatever minimum balance which FBC may have against our client will not even be sufficient to complete the Project, to undertake correction of its faulty and defective work, and to cover the 10% cash retention**. It appears further that our client has overpaid your client by Four Hundred Fifteen Thousand Seven Hundred One and 34/100 Pesos (₱415,701.34).

We are, therefore, giving your client fifteen (15) days from your receipt of this letter to complete and make good its undertakings/ obligations under the Agreement. Failure on the part of your client to do so will leave our client no other alternative but to invoke the provisions of said Agreement declaring your client in default, and cause the Project to be completed and the deficiencies corrected, deducting the costs from whatever payment which may be due to your client, and collecting from your client the difference.

Further, please advise your client that there will be legal constraints for our Atty. Avelino J. Cruz, Jr. to mediate between your client and our client under the circumstances. Please be assured, however,

that like you, we are advising our client to opt for a reasonable resolution of the problem.[34]

In its letter-reply dated September 24, 1986 of FBC's counsel, FBC insisted that Rudlin still owed it the sum of ₱2.4 million, more or less; that it cannot turn over the project because Architect Quezon refused to meet with FBC's engineers to discuss the additives and deductives work summary; that Architect Quezon's letter cannot be made the basis of FBC's obligations under the Construction Agreement; and that the punch list dated June 27, 1986 is only a dilatory document as certain items being purely additional works should be excluded. FBC protested the leaks and flooding mentioned by Rudlin's counsel, which FBC said are minor items which can be easily corrected as in fact it was corrected by the waterproofing subcontractor INDESCO which was referred by Rudlin. To solve the problem, FBC proposed that the corrective works be done by Rudlin provided the price thereof be approved by FBC and Rudlin will not spend more than ₱50,000.00 therefor. As to the 10% retention fund, FBC advised that per understanding with Rudlin, this was waived in view of the commitment of FBC to finish the project to the best of its funding ability.[35]

FBC then suggested that Rudlin release the sum of ₱500,000.00 so that FBC can pay its suppliers and to enable it to submit the required affidavit of complete payment of labor and material men; that Rudlin's retained architect complete the reconciliation of the additive and deductive works with FBC; and thereafter, to arrange payment backed up by sufficient collaterals.[36]

In its subsequent letter dated October 3, 1986, FBC again pressed for payment and further distanced itself from INDESCO, claiming that negotiations for the waterproofing works with INDESCO was handled by Rudlin's Mr. Bravante. FBC informed Rudlin that it was advised by INDESCO that the waterproofing

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[34] *Id.* at 680-682.

[35] *Id.* at 687-689.

[36] *Id.* at 690.

complaints have been attended to.[37] But since the roof leaks and flooding of the corridor and classrooms persisted despite the repairs supposedly done by the subcontractor, Rudlin formally notified its lawyer that it was invoking the contractor's warranty under the Construction Agreement and sought assistance to have the said defects and deficiencies corrected by the Contractor.[38] Consequently, Rudlin through a letter dated October 14, 1986 signed by its Vice-President and Chief Operating Officer, Teresita L. Ngan Tian, advised FBC that the latter's request for payment "has been held in abeyance until the waterproofing job is completed to the satisfaction of the Owners."[39]

We find that in withholding payment of the balance of the contract price, Rudlin properly exercised its rights under the Construction Agreement. The CA thus erred in ordering Rudlin to pay FBC the balance of the contract price which was computed as follows:

1. Contract Price	₱ 6,933,268.00
2. Additives	₱ 1,074,385.53
Total Additive Cost	₱ 8,007,653.53
3. Deductives	₱ 886,706.45
4. Direct Payment	₱ 4,874,920.14
5. Chargeable Materials	₱ 727,688.90
6. Rebates	₱ 9,793.22
Total Payments	₱ 6,499,188.71
TOTAL UNPAID BALANCE	**₱ 1,508,464.84**[40]

The above computation was based solely on the Summary of Contract Revisions and Unpaid Balances submitted by FBC's witness Gregorio P. Pineda. Rudlin submitted its own computation based on what it claims as the true contract price of ₱6,006,965.00 and asserting that the following should be deducted: ₱4,878,920.14

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[37] *Id.* at 696-697.

[38] *Id.* at 1283.

[39] *Id.* at 1282.

[40] CA *rollo,* pp. 852-853.

as payments to FBC which the latter admitted; ₱727,688.90 direct payments to suppliers also admitted by FBC; deductives of ₱1,180,127.35 representing the cost of modifications in the original plans and specifications which were not approved by Rudlin and its architect; and ₱350,000.00 for the repairs undertaken by Rudlin.

Considering that FBC had not completed the corrective/repair works in accordance with the Contract Documents and as approved or certified in writing by the Architect as to its completion, its demand for the payment of the final balance was premature. Under the Letter-Agreement dated June 5, 1986, final payment was subject to reconciliation of their accounts regarding the upgrading and downgrading done on the project. Obviously, this cannot be complied with unless FBC as the defaulting party completes the repair/corrective works for only then can the actual cost of additives and deductives be determined. 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.[41] When the substandard waterproofing caused extensive damage to the school building, it was incumbent upon FBC to institute at its own expense the proper repairs in accordance with the guaranty-warranty stated in the Construction Agreement. Thus, Rudlin cannot be said to have incurred delay in the reconciliation of accounts, as a precondition for final payment; instead, it is FBC who was guilty of delay by its stubborn refusal to replace or re-execute the defective waterproofing of the subject school building.

On the issue of the correct total contract price, we hold that Rudlin failed to substantiate its claim that the contract price stated in the Construction Agreement (₱6,933,268.00) was not the true contract price because it had an understanding with FBC's Jaime B. Lo that they would decrease said amount to a mutually acceptable amount.

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[41] *Tanguilig v. Court of Appeals,* G.R. No. 117190, January 2, 1997, 266 SCRA 78, 87.

Under the general rule in Section 9 of Rule 130 of the Rules of Court, when the terms of an agreement were reduced in writing, as in this case, it is deemed to contain all the terms agreed upon and no evidence of such terms can be admitted other than the contents thereof. Rudlin argues that under Section 9, Rule 130, a party may present evidence to modify, explain or add to the terms of the written agreement if it is put in issue in the pleading, "[t]he failure of the written agreement to express the true intent and the agreement of the parties thereto." Assuming as true Rudlin's claim that Exhibit "7" failed to accurately reflect an intent of the parties to fix the total contract price at ₱6,006,965.00, Rudlin failed to avail of its right to seek the reformation of the instrument to the end that such true intention may be expressed.

Evidence of a prior or contemporaneous verbal agreement is generally not admissible to vary, contradict or defeat the operation of a valid contract.[42] Section 9 of Rule 130 of the Rules of Court states:

> SEC. 9. *Evidence of written agreements.*—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.
>
> 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:
>
> (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
>
> (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
>
> (c) The validity of the written agreement; or
>
> (d) The existence of other terms agreed to by the parties or their successors-in-interest after the execution of the written agreement.

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[42] *Lapulapu Foundation, Inc. v. Court of Appeals*, 466 Phil. 53, 62 (2004), citing *MC Engineering, Inc. v. Court of Appeals*, G.R. No. 104047, April 3, 2002, 380 SCRA 116, 137.

The term "agreement" includes wills.

Rudlin cannot invoke the exception under (a) or (b) of the above provision. Such exception obtains only where "the written contract is so ambiguous or obscure in terms that the contractual intention of the parties cannot be understood from a mere reading of the instrument. In such a case, extrinsic evidence of the subject matter of the contract, of the relations of the parties to each other, and of the facts and circumstances surrounding them when they entered into the contract may be received to enable the court to make a proper interpretation of the instrument."[43]

Under the fourth exception, however, Rudlin's evidence is admissible to show the existence of such other terms agreed to by the parties after the execution of the contract. But apart from the Bar Chart and Cash Flow Chart prepared by FBC, and the testimony of Rodolfo J. Lagera, no competent evidence was adduced by Rudlin to prove that the amount of ₱6,006,965.00 stated therein as contract price was the actual decreased amount that FBC and Rudlin found mutually acceptable. As to the affidavits executed by Architect Quezon and his associate Roberto R. Antonio,[44] the same do not serve as competent proof of the purported actual contract price as they did not testify thereon. Significantly, the June 5, 1986 Letter-Agreement did not at all mention the total contract price. Likewise, there is nothing in the various letters sent by Rudlin to FBC while construction was in progress and even subsequent to the execution of the said Letter-Agreement indicating that Rudlin corrected the contract price of ₱6,933,268.00 which FBC had repeatedly mentioned in its letters and documents.[45]

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[43] *Seaoil Petroleum Corporation v. Autocorp Group*, G.R. No. 164326, October 17, 2008, 569 SCRA 387, 396-397, citing *Ortañez v. CA*, 334 Phil. 514, 519-520 (1997) & *Heirs of Amparo del Rosario v. Aurora Santos, et al.*, 194 Phil. 670, 687 (1981).

[44] Records, pp. 1184-1185, 1202-1203.

[45] *Id.* at 602-603, 623, 629, 741.

As to Rudlin's counterclaim for reimbursement of its expenses in repairing the defective waterproofing, not a single receipt was presented by Rudlin to prove that such expense was actually incurred by it. Under the Civil Code, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. The award of actual damages must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and nonsubstantial proof.[46]

The testimony of Rodolfo J. Lagera on the total cost allegedly spent by Rudlin in repairing the waterproofing works does not suffice. A court cannot rely on speculations, conjectures or guesswork as to the fact of damage but must depend upon competent proof that they have indeed been suffered by the injured party and on the basis of the best evidence obtainable as to the actual amount thereof. It must point out specific facts that could provide the gauge for measuring whatever compensatory or actual damages were borne.[47]

The counterclaim for attorney's fees must likewise be denied. We have stressed that the award of attorney's fees is the exception rather than the rule, as they are not always awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees as part of damages is awarded only in the instances specified in Article 2208 of the Civil Code.[48]

ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

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[46] *Adrian Wilson International Associates, Inc. v. TMX Philippines, Inc.*, G.R. No. 162608, July 26, 2010, p. 16, citing *Spouses Ong v. Court of Appeals,* 361 Phil. 338, 353 (1999) and CIVIL CODE, Art. 2199.

[47] *Tan v. G.V.T. Engineering Services,* G.R. No. 153057, August 7, 2006, 498 SCRA 93, 110-111, citing *Lagon v. Hooven Comalco Industries, Inc.*, 402 Phil. 404, 424-425 (2001).

[48] *Padillo v. Court of Appeals,* G.R. No. 119707, November 29, 2001, 371 SCRA 27, 46-47.

(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;

(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 the 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.

None of the foregoing situations obtains in the case at bar.

WHEREFORE, the petition in G.R. No. 164186 is *DENIED* while the petition in G.R. No. 164347 is *PARTLY GRANTED*. The Decision dated December 12, 2003 of the Court of Appeals in CA-G.R. CV No. 41224 is *REVERSED* and *SET ASIDE*, and the Decision dated January 12, 1993 of the Regional Trial Court of Makati City, Branch 65 in Civil Case No. 16266 is *REINSTATED*.

No costs.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Sereno, JJ.,* concur.

THIRD DIVISION

[G.R. No. 165876. October 4, 2010]

WESTMONT INVESTMENT CORPORATION, *petitioner, vs.* **FARMIX FERTILIZER CORPORATION, PEARLBANK SECURITIES, INC., MANUEL N. TANKIANSEE and JUANITA U. TAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES; PROHIBITS THE FILING OF MOTIONS FOR RECONSIDERATION.— Rule 1 of the Interim Rules of Procedure for Intra-Corporate Controversies specifically prohibits the filing of motions for reconsideration, to wit: "Sec. 8. *Prohibited pleadings*. — The following pleadings are prohibited: (1) Motion to dismiss; (2) Motion for a bill of particulars; (3) **Motion for new trial, or for reconsideration of judgment or order, or for re-opening of trial;** (4) Motion for extension of time to file pleadings, affidavits or any other paper, except those filed due to clearly compelling reasons. Such motion must be verified and under oath; and (5) Motion for postponement and other motions of similar intent, except those filed due to clearly compelling reasons. Such motion must be verified and under oath."

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT TIMELY FILED IN CASE AT BAR.— [T]he RTC x x x should not have issued the December 3, 2003 Order denying the UOB Group's motion for reconsideration, which WINCORP adopted. The remedy of an aggrieved party like WINCORP is to file a petition for *certiorari* within sixty (60) days from receipt of the assailed order and not to file a motion for reconsideration, the latter being a prohibited pleading. Here, WINCORP should have filed the petition for *certiorari* before the CA on or before January 12, 2004. It was, however, filed only on February 13, 2004. With that, the CA should have dismissed the petition outright for being filed late. Even if the sixty (60)-day period will be reckoned from WINCORP's receipt

of the December 3, 2003 Order, the petition for *certiorari* was still filed out of time since it should have been filed on or before February 2, 2004.

3. ID.; CIVIL PROCEDURE; RULE AGAINST FORUM SHOPPING; VIOLATED WHEN THE PETITION FOR *CERTIORARI* AND THE APPEAL SIMULTANEOUSLY FILED BY A PARTY HAVE THE SAME PRAYER; CASE AT BAR.— Indeed, even if we consider the petition to have been filed on time by reckoning the sixty (60)-day period from WINCORP's receipt of the February 2, 2004 Decision, the same is still dismissible for violating the rule against forum shopping. The petition for *certiorari* and the appeal simultaneously filed by WINCORP before the CA have the same prayer — the setting aside of the February 2, 2004 RTC Decision. Though WINCORP argues that the petition for *certiorari* assails the propriety and manner by which it was rendered while the appeal goes into the merits of the decision itself, still, both remedies have one ultimate goal. To give due course to both petitions will definitely pose an evil that the prohibition on forum shopping was seeking to prevent — the possibility of two (2) different tribunals rendering conflicting decisions.

4. ID.; ID.; ID.; NOT VIOLATED BY THE SIMULTANEOUS FILING OF A PETITION FOR *CERTIORARI* AND AN APPEAL WHEN THEY DEAL WITH DIFFERENT MATTERS.— WINCORP cannot rely on our pronouncement in *Paradero v. Abragan* that the simultaneous filing of a petition for *certiorari* and appeal is allowed in certain cases. In *Paradero*, we stated that the simultaneous filing of the petition for *certiorari* and appeal may be allowed where they deal with different matters, as when the petition for *certiorari* questions an order granting execution pending appeal while the appeal deals with the merits of the decision which is being executed. The evil sought to be avoided by the proscription on forum shopping in such cases would not be present as any ruling on the legality of the execution pending appeal in the *certiorari* case would not amount to *res judicata* in the main case subject of the appeal. In the instant case, however, the *certiorari* case and appeal dealt with the same matter, the February 2, 2004 RTC Decision.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.

Libarios Jalandoni Dimayuga & Magtanong for Farmix Fertilizers Corp. & Pearlbank Securities, Inc.

Saulog and De Leon Law Offices for Manuel N. Tankianse and Juanita U. Tan.

D E C I S I O N

VILLARAMA, JR., *J.*:

On appeal is the Decision[1] dated October 29, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 82198. The CA had dismissed petitioner Westmont Investment Corporation's petition for *certiorari* and *mandamus* assailing the Decision[2] dated February 2, 2004 of the Regional Trial Court (RTC) of Manila, Branch 46 in Civil Case No. 02-103160.

The facts are as follows:

Sometime in 1999, when Westmont Bank had to undergo rehabilitation and financial assistance under a plan approved by the Bangko Sentral ng Pilipinas (BSP) and Philippine Deposit Insurance Corporation (PDIC), United Overseas Bank Limited (UOBL) expressed interest in acquiring the controlling interest of Westmont or up to 67% of its voting stock.[3] At the time, the following were the controlling shareholders of Westmont (hereinafter "the former controlling shareholders"):

a. The Espiritu Group, composed of petitioner Westmont Investment Corporation (petitioner WINCORP), John B. Espiritu,[4] Sta. Lucia Realty and Development

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[1] *Rollo*, pp. 64-74. Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Regalado E. Maambong and Lucenito N. Tagle concurring.

[2] CA *rollo*, pp. 43-63. Penned by Judge Artemio S. Tipon.

[3] *Id.* at 45, 71.

[4] Also referred to as John Anthony B. Espiritu in some parts of the records.

Corporation, Golden Era Holdings, Inc. and Exchange Equity Corporation;

b. The Cua Group, composed of Victor Say, Lory Cua, Santiago Cua, Sr., Santiago Cua, Jr., Simeon S. Cua, Henry T. Cua Loping, Vicente T. Cua Loping and ACL Development Corporation;

c. The Farmix Group, composed of respondents Farmix Fertilizer Corporation and Pearlbank Securities, Inc.;

d. The Tankiansee Group, composed of respondents Manuel N. Tankiansee and Juanita U. Tan; and

e. The Tan Caktiong Group, composed of Tony Tan Caktiong and William Tan Untiong.[5]

Under the Transfer Agreement, the former controlling shareholders shall sell to UOBL, through a leveraged buy-out and quasi-reorganization of the bank, their interest in the amount of ₱1.4 billion.

Under the leveraged buy-out, UOBL and the former controlling stockholders agreed that the mode of payment to the latter would be done by an assignment of certain receivables from the bank's portfolio, which UOBL considered as "political loans," equivalent to ₱1.4 billion. Thereafter, their shares would be diluted to enable UOBL to acquire the controlling interest through a subscription of shares in the bank. The bank's trust department will act as collecting agent of the former controlling stockholders and all monies collected on the ₱1.4 billion receivables would be reinvested in the bank through the subscription of common shares of the bank. The intended result would be that 67% will be held by UOBL, and of the remaining 33%, 28% shall be held in trust by the Tan Caktiong Group for the former controlling shareholders and the remaining 5% shall be held by the Tan Caktiong Group for its own account. To facilitate the buy-out, a trust agreement was executed by the former controlling stockholders in favor of the Tan Caktiong Group.

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[5] CA *rollo*, pp. 43-45, 64-65, 71.

After the dilution of the interest of the former controlling shareholders, the paid-up capital of the bank was increased by ₱3.5 billion and new shares were issued by the bank, now named United Overseas Bank of the Philippines (UOBP).

On February 23, 2000, the BSP approved Board Resolution No. 305 directing the bank to reinstate the ₱1.4 billion receivables in its books within thirty (30) days from receipt of the said resolution and to take positive steps to recover the ₱1.4 billion assets transferred to the former controlling shareholders.

As a result of the BSP Resolution, UOBL did not pay the former controlling stockholders the consideration due them under the agreement and UOBP reinstated the ₱1.4 billion receivables in its books.

Because of this development, the Espiritu Group revoked its trust agreement with the Tan Caktiong Group. Then, on March 25, 2002, John B. Espiritu, representing the Espiritu and Tan Caktiong Groups, filed a petition[6] against UOBL, UOBP, Manta Ray Holdings, Inc., the UOBL Directors, and UOBP Corporate Secretary Marianne Malate-Guerrero (hereinafter the UOB Group) to compel the issuance of shares of stock and/or return of management and control. The petition was brought under the Interim Rules of Procedure for Intra-Corporate Controversies.[7] Answers[8] to the petition were filed by respondents on May 2, 2002.

On May 23, 2002, the Regional Trial Court (RTC) issued a Notice of Pre-Trial[9] ordering the parties to file their respective briefs and scheduling the pre-trial on June 26, 2002. On June 26, 2002, however, the pre-trial was cancelled and reset to July 19, 2002.[10]

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[6] Records, Vol. I, pp. 1-36.

[7] Effective April 1, 2001.

[8] Records, Vol. II, pp. 10-57.

[9] Records, Vol. IV, pp. 301-302.

[10] Records, Vol. VI, p. 42.

On June 27, 2002, the Farmix and Tankiansee Groups filed a Motion for Leave to File and Admit Attached Petition in Intervention[11] for the purpose of enforcing their 10.36% share in the ₱1.4 billion receivables. Said petition was admitted by the trial court.[12]

In the meantime, the parties filed their respective pre-trial briefs and resorted to different modes of discovery.

On July 5, 2002, the Espiritu and Tan Caktiong Groups and the UOB Group executed a compromise agreement. Consequently, on July 17, 2002, said parties filed a Joint Motion to Dismiss with Prejudice on the ground that they have agreed to amicably settle the dispute which gave rise to the filing of the Petition and Answers with Counterclaims. The scheduled pre-trial on July 19, 2002 no longer pushed through because of this development.

After the parties were heard, the RTC by Order[13] dated August 19, 2002, granted the Joint Motion to Dismiss with Prejudice. The Farmix Group, however, claimed that the settlement was not disclosed to the Farmix and Tankiansee Groups.

Thus, on September 23, 2002, the RTC issued another Notice of Pre-trial[14] again directing the parties to file their respective briefs and setting the pre-trial on October 8, 2002. On October 8, 2002 however, on motion of the Farmix and Tankiansee Groups, the pre-trial was postponed until further notice.[15] The date of pre-trial was reset several times more until the parties agreed to hold it on January 31, 2003.[16]

In the meantime, on November 12, 2002, the Farmix Group had filed an amended petition-in-intervention. The same was

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[11] *Id.* at 43-53.

[12] CA *rollo*, p. 169.

[13] Records, Vol. VI, pp. 173-174.

[14] *Id.* at 211-212.

[15] Records, Vol. VIII, p. 61.

[16] *Id.* at 283.

admitted by the RTC on November 25, 2002.[17] Said amended pleading was also adopted by manifestation by the Tankiansee Group. But after a few months, the Tankiansee Group filed an omnibus motion for the withdrawal of said manifestation, for the issuance of protective orders to prevent the taking of deposition upon oral examination of its group and for the early setting of the pre-trial conference. Said motion was granted by the trial court, but, the pre-trial was ordered to proceed as scheduled.

On January 31, 2003, the pre-trial scheduled on the said day was again cancelled. It was reset seven (7) times more, the last date being November 14, 2003.

On **November 12, 2003**, the RTC issued an Order[18] cancelling the scheduled pre-trial on November 14, 2003. It ruled that "[a]fter careful evaluation of the pleadings, affidavits and documentary evidence presented by the parties, the Court believes that the issues in this case may [already] be resolved as warranted by Section 4, Rule 4 of the Interim Rules of Procedure [for] Intra-Corporate Controversies." The RTC ordered the parties to submit their respective memoranda without prejudice to the reception of additional evidence or conduct of clarificatory hearings as may be determined by the court. Thereafter, the case shall be deemed submitted for decision.

The UOB Group (except Manta Ray Holdings, Inc.) moved to reconsider[19] the November 12, 2003 Order, arguing that there were still issues of fact that could only be resolved through summary trial. The Tan Caktiong Group, through a Manifestation,[20] adopted the UOB Group's motion for reconsideration. The Espiritu Group through a Manifestation and Motion,[21] also adopted the UOB Group's motion for reconsideration but also raised additional arguments.

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[17] *Id.* at 225-232.

[18] CA *rollo*, pp. 274-275.

[19] *Id.* at 277-289.

[20] *Id.* at 302-305.

[21] *Id.* at 290-301.

On **December 3, 2003**, the RTC issued an Order[22] denying the motion for reconsideration filed by the UOB Group. The RTC ruled:

> The Court once again carefully evaluated the voluminous pleadings, affidavits and documents submitted before it and is convinced that a decision may already be rendered by the Court, whether full or otherwise, after submission by the parties of their respective memoranda pursuant to Section 4, Rule 4 of the Interim Rules. The Court reiterates that this is without prejudice to the reception of additional evidence and/or the conduct of clarificatory hearing(s) as may be determined by the Court after the submission of the parties' memoranda.[23]

The RTC then reiterated its directive for the parties to file their respective memoranda. The parties complied.

On February 2, 2004, the RTC rendered a Decision after determining that there were only two (2) principal issues to be resolved, to wit:

> a) Is the proportionate share of intervenors in the Php 1.4 Billion receivables 7.66% or 10.36%?
>
> b) Are the intervenors entitled to their alleged proportional share in the thirty-three (33%) percent of the common shares (equivalent to 1,713,510 shares) issued in UOBP [and] registered in the name of the Tan Caktiong Group?[24]

The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Ordering UOBL to pay intervenors the amount of Php 99, 870,400.00 representing their 10.36% collective interest in the Php 1.4 Billion receivables which is valued at Php 964 Million with 12% interest from the time of filing of the petition-in-intervention until full payment;

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[22] *Id.* at 306-310.

[23] *Id.* at 308-309.

[24] *Id.* at 49-50.

2. Ordering UOBL to pay intervenors the amount of Php 30,766,060.58 representing the value of intervenors' 10.36% [share] of the 28% share/equity in UOBP held in trust by the Tan Caktiong Group for and in behalf of former Westmont Bank Shareholders based on the Php 350 Million valuation stated in the settlement agreements, plus 12% interest from the time of filing of the petition-in-intervention until fully paid;

3. Ordering UOBL to pay intervenors the amount of ₱5,000,000.00 as and by way of attorney's fees;

4. Ordering UOBL to pay the costs of suit[;]

5. On the cross-claim, ordering the Espiritu Group to reimburse and indemnify UOBL of the total amount due to intervenors in excess of Php 62,776,040.00.

All other cross-claim and counterclaims are hereby denied.

IT IS SO ORDERED.[25]

On February 13, 2004, the Espiritu Group, except petitioner WINCORP, through its attorney-in-fact, John B. Espiritu, filed a Notice of Appeal[26] with the RTC alleging that the February 2, 2004 Decision was contrary to law and evidence on record. On the same day, petitioner WINCORP, through the same attorney-in-fact, John B. Espiritu and by the same counsel, Angara Abello Concepcion Regala and Cruz (ACCRA), filed an *Ex Abundanti Ad Cautelam* Notice of Appeal[27] assailing the RTC Decision for being contrary to law and evidence, but without waiving any of its remedies against the decision. True enough, also on February 13, 2004, WINCORP filed a petition for *certiorari* and *mandamus* with the CA seeking to annul the February 2, 2004 Decision of the RTC. WINCORP alleged that:

A

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK OR EXCESS OF

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[25] *Id.* at 61-62.

[26] Records, Vol. XVII, pp. 269-273.

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

JURISDICTION, IN ISSUING THE ASSAILED DECISION, CONSIDERING THAT:

1. THE JUDGMENT BEFORE PRE-TRIAL IS PREMATURE BECAUSE OF THE MANY OUTSTANDING FACTUAL ISSUES IN THE CASE, WHICH CAN ONLY BE RESOLVED AFTER TRIAL ON THE MERITS.

2. THE PUBLIC RESPONDENT MADE FINDINGS OF FACTS IN ITS ASSAILED DECISION BASED ON THE SELF-SERVING ALLEGATIONS OF THE FARMIX AND TANKIANSEE GROUPS, WITHOUT GIVING PETITIONER THE RIGHT TO CROSS-EXAMINE THEM ON SUCH ALLEGATIONS, AND THUS, DEPRIVING THEM OF THEIR RIGHT TO DUE PROCESS.

B

THE PUBLIC RESPONDENT GRAVELY AND UNLAWFULLY NEGLECTED TO PERFORM HIS LEGAL DUTY TO PROCEED WITH THE TRIAL ON THE DISPUTE AND CONTROVERTED FACTS, THEREBY DEPRIVING PETITIONER DUE PROCESS OF LAW.[28]

WINCORP prayed that:

1. Upon filing of th[e] Petition, a Temporary Restraining Order/ Writ of Preliminary Injunction be issued enjoining the Regional Trial Court of Manila, Branch 46, from implementing the Assailed Decision, including the issuance of any writ of execution in connection therewith;

2. The Petition be given due course and judgment be rendered for the issuance of a writ of *certiorari* annulling the Assailed Decision of the public respondent; and

3. A writ of *mandamus* be issued directing the public respondent to proceed with trial on the merits in Civil Case No. 02-103160.[29]

On February 19, 2004, WINCORP filed with the CA a Manifestation and Compliance with Undertaking.[30] WINCORP

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[28] CA *rollo*, pp. 18-19.

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

[30] *Id.* at 636-641.

manifested that it filed a Notice of Appeal *Ad Cautelam* with the RTC simultaneous with the filing of the petition for *certiorari* and *mandamus* with the CA. WINCORP, on even date, also filed a similar Manifestation and Compliance with Undertaking[31] with the RTC, manifesting that on February 13, 2004, it filed a Petition for *Certiorari* and *Mandamus* with the CA docketed as CA-G.R. SP No. 82198 seeking the annulment of the February 2, 2004 RTC Decision.

On October 29, 2004, the CA dismissed WINCORP's petition for *certiorari* and *mandamus* on the ground of forum shopping. The CA noted that the main relief sought in the petition for *certiorari* is the annulment of the February 2, 2004 Decision of the RTC, which was the same decision subject of WINCORP's *Ex Abundanti Ad Cautelam* Notice of Appeal. Thus, the ultimate relief sought by the two (2) separate remedies simultaneously availed of by WINCORP is one and the same — the setting aside of the February 2, 2004 Decision of the RTC.

As to WINCORP's claim that the RTC's judgment was improper, the CA held that the RTC did not act prematurely because, there were no remaining genuine issues of fact which needed to be resolved. The CA noted that the supposed factual issues WINCORP enumerated could be determined through an inspection of the pleadings and documentary evidence submitted by the parties and given the abundance of materials in the hands of the RTC which surely conferred upon it a comprehensive review. Holding a formal trial would merely result in undue delay and expense for the parties, added the CA.

Regarding WINCORP's claim that it was deprived of due process, the CA found the argument without merit as the records show that WINCORP was given every opportunity to present its side. It was likewise evident in the assailed decision that the RTC fairly assessed the parties' arguments and its findings were supported by the evidence on record. Accordingly, no grave abuse of discretion could be ascribed to the RTC in rendering the assailed decision.

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[31] Records, Vol. XVII, pp. 283-285.

Aggrieved, WINCORP filed the present petition under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

WINCORP raises the following issues:

A.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE 2 FEBRUARY 2004 ORDER OF THE RTC MANILA, WHICH, WITH GRAVE ABUSE OF DISCRETION, PREMATURELY RENDERED JUDGMENT BEFORE PRE-TRIAL; THUS, DEPRIVING PETITIONER OF ITS CONSTITUTIONAL RIGHT TO DUE PROCESS.

B.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER VIOLATED THE PROCEDURAL RULE AGAINST FORUM SHOPPING.[32]

WINCORP argues that the CA overlooked the substantial issues of fact raised by all the parties. It claims that Section 4, Rule 4 of the Interim Rules of Procedure for Intra-Corporate Controversies does not give trial courts unbridled discretion to render judgment immediately based on the pre-trial briefs, pleadings, affidavits and other evidence. WINCORP cites Section 1, Rule 5 of the Interim Rules which provides that if the court deems necessary to hold hearings to determine specific factual matters before judgment, it shall set the case for trial. WINCORP says that judgment before pre-trial under the Interim Rules is akin to rendering summary judgment under Rule 35 of the Rules of Court which merely gives the court limited authority to render summary judgment if it clearly appears that there is no genuine issue of fact. From the pre-trial briefs of the parties alone, it can be seen that there were a number of substantial issues of fact, material to the claims and defenses of all parties, which needed to be resolved first. WINCORP further claims that the December 3, 2003 Order of the RTC denying the UOB Group's motion for reconsideration of the November 12, 2003 Order was silent as to the Espiritu Group's manifestation and

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[32] *Rollo,* pp. 1374-1375.

motion assailing said order. It also contends that with the RTC's declaration in its order that the directive to submit memoranda was "without prejudice to the reception of additional evidence and/or the conduct of clarificatory hearing(s) as may be determined by the Court after the submission of the parties' memoranda," WINCORP was led to believe that the trial court will still receive additional evidence and conduct hearings since there were a number of factual issues to be resolved.

WINCORP adds that it did not engage in forum shopping. It claims that its appeal goes into the merits of the decision while the petition for *certiorari* delves into the propriety of and the manner by which the RTC issued said decision. WINCORP cites the case of *Paradero v. Abragan*[33] which held that the rule on forum shopping is not violated by the mere fact that both appeal and *certiorari* are resorted to by the same party at the same time. It also argues that appeal is a slow and tedious process and thus an inadequate remedy to protect its right.

The petition fails.

The petition before the CA was filed out of time. A perusal of the allegations in the subject petition reveals that though it sought the nullification of the February 2, 2004 Decision of the RTC, what it questioned was the RTC's resolve to render a judgment before trial pursuant to Section 4, Rule 4 of the Interim Rules of Procedure for Intra-Corporate Controversies. Said section provides,

> Sec. 4. *Judgment before pre-trial*. — If, after submission of the pre-trial briefs, the court determines that, upon consideration of the pleadings, the affidavits and other evidence submitted by the parties, a judgment may be rendered, the court may order the parties to file simultaneously their respective memoranda within a non-extendible period of twenty (20) days from receipt of the order. Thereafter, the court shall render judgment, either full or otherwise, not later than ninety (90) days from the expiration of the period to file the memoranda.

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[33] G.R. No. 158917, March 1, 2004, 424 SCRA 155, 161.

As correctly pointed out by the Farmix Group, it is very clear that the issues raised in the subject petition pertained to previous orders of the RTC — the November 12 and December 3, 2003 Orders — submitting the case for decision.

The November 12, 2003 Order was received by WINCORP on November 13, 2003. It then filed a Manifestation and Motion adopting the UOB Group's motion for reconsideration of said order and even raised additional arguments. Thereafter, the RTC issued the December 3, 2003 Order denying UOB Group's motion for reconsideration but there was no mention of WINCORP's manifestation and motion.

Rule 1 of the Interim Rules of Procedure for Intra-Corporate Controversies specifically prohibits the filing of motions for reconsideration, to wit:

> Sec. 8. *Prohibited pleadings*. — The following pleadings are prohibited:
>
> (1) Motion to dismiss;
>
> (2) Motion for a bill of particulars;
>
> (3) **Motion for new trial, or for reconsideration of judgment or order, or for re-opening of trial;**
>
> (4) Motion for extension of time to file pleadings, affidavits or any other paper, except those filed due to clearly compelling reasons. Such motion must be verified and under oath; and
>
> (5) Motion for postponement and other motions of similar intent, except those filed due to clearly compelling reasons. Such motion must be verified and under oath. (Emphasis and underscoring supplied.)

With the above proscription, the RTC in the first place should not have issued the December 3, 2003 Order denying the UOB Group's motion for reconsideration, which WINCORP adopted. The remedy of an aggrieved party like WINCORP is to file a petition for *certiorari* within sixty (60) days from receipt of the assailed order and not to file a motion for reconsideration,

the latter being a prohibited pleading. Here, WINCORP should have filed the petition for *certiorari* before the CA on or before January 12, 2004. It was, however, filed only on February 13, 2004. With that, the CA should have dismissed the petition outright for being filed late.

Even if the sixty (60)-day period will be reckoned from WINCORP's receipt of the December 3, 2003 Order, the petition for *certiorari* was still filed out of time since it should have been filed on or before February 2, 2004.[34]

This Court can only conclude that WINCORP filed the petition for *certiorari* supposedly assailing the February 2, 2004 Decision as a subterfuge to make it appear that it was filed on time when in truth it was assailing an earlier order, the period for which to assail the same has long elapsed.

Indeed, even if we consider the petition to have been filed on time by reckoning the sixty (60)-day period from WINCORP's receipt of the February 2, 2004 Decision, the same is still dismissible for violating the rule against forum shopping. The petition for *certiorari* and the appeal simultaneously filed by WINCORP before the CA have the same prayer — the setting aside of the February 2, 2004 RTC Decision. Though WINCORP argues that the petition for *certiorari* assails the propriety and manner by which it was rendered while the appeal goes into the merits of the decision itself, still, both remedies have one ultimate goal. To give due course to both petitions will definitely pose an evil that the prohibition on forum shopping was seeking to prevent — the possibility of two (2) different tribunals rendering conflicting decisions.[35]

WINCORP cannot rely on our pronouncement in *Paradero v. Abragan* that the simultaneous filing of a petition for *certiorari* and appeal is allowed in certain cases. In *Paradero*, we stated

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[34] The 60th day is February 1, 2004 which fell on a Sunday.

[35] *Calinisan v. Court of Appeals*, G.R. No. 158031, November 20, 2007, 537 SCRA 672, 678, citing *Guaranteed Hotels, Inc. v. Baltao*, G.R. No. 164338, January 17, 2005, 448 SCRA 738, 746.

that the simultaneous filing of the petition for *certiorari* and appeal may be allowed where they deal with different matters, as when the petition for *certiorari* questions an order granting execution pending appeal while the appeal deals with the merits of the decision which is being executed. The evil sought to be avoided by the proscription on forum shopping in such cases would not be present as any ruling on the legality of the execution pending appeal in the *certiorari* case would not amount to *res judicata* in the main case subject of the appeal. In the instant case, however, the *certiorari* case and appeal dealt with the same matter, the February 2, 2004 RTC Decision.

WHEREFORE, in view of the foregoing, the instant petition is *DENIED* for lack of merit.

With costs against the petitioner.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 167810. October 4, 2010]

REPUBLIC OF THE PHILIPPINES, represented by the NATIONAL POWER CORPORATION, *petitioner, vs.* **ATTY. RICHARD B. RAMBUYONG,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS; NATIONAL POWER CORPORATION; A GOVERNMENT-OWNED AND CONTROLLED CORPORATION INCLUDED WITHIN THE TERM "INSTRUMENTALITY OF THE GOVERNMENT."— Section 2 of the Administrative Code of 1987 is clear and unambiguous. It categorically provides

that the term "instrumentality" includes government-owned or controlled corporations. Hence there is no room for construction. All that has to be done is to apply the law as called for by the circumstances of the case. It is not disputed that the NPC is a government-owned or controlled corporation. Therefore following Section 2 of the Administrative Code of 1987, the NPC is clearly an instrumentality of the government. It is also significant to point out that in *Maceda v. Macaraig, Jr.* the Court stated that "[t]he NPC is a government instrumentality with the enormous task of undertaking development of hydroelectric generation of power and production of electricity from other sources, as well as the transmission of electric power on a nationwide basis, to improve the quality of life of the people pursuant to the State policy embodied in Section [9], Article II of the 1987 Constitution."

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; A STRAINED AND CONTRARY INTERPRETATION OF CLEARLY WORDED PROVISIONS OF LAW WHICH SHOULD BE MERELY APPLIED AND NOT INTERPRETED, A CASE OF.— Given the categorical words of both the law and jurisprudence, to still go to extra-ordinary lengths to interpret the intention of lawmakers and come out with the construction that a government-owned or controlled corporation like the NPC is not included within the term "instrumentality of the government" is grave abuse of discretion. "By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction." "Grave abuse of discretion is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism." The strained and contrary interpretation of clearly worded provisions of law, which therefore should be merely applied and not interpreted, is an earmark of despotism and grave abuse of discretion.

3. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; SANGGUNIAN MEMBERS; PRACTICE OF PROFESSION; A SANGGUNIAN MEMBER CANNOT APPEAR AS COUNSEL OF A PARTY ADVERSE TO AN INSTRUMENTALITY OF THE

GOVERNMENT.— Section 446 of the Local Government Code provides that "[t]he *sangguniang bayan*, the legislative body of the municipality, shall be composed of the municipal vice mayor as the presiding officer x x x." Thus, pursuant to Sec. 90(b) (1) of the Local Government Code, Atty. Rambuyong, as *sanggunian* member, cannot appear as counsel of a party adverse to the NPC, which is an instrumentality of government.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

D E C I S I O N

DEL CASTILLO, *J.*:

This petition for review assails the May 20, 2004 Decision[1] and April 13, 2005 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 72800, which dismissed the petition before it and denied reconsideration, respectively.

Factual Antecedents

Alfredo Y. Chu (Chu) filed a case for collection of a sum of money and/or damages against the National Power Corporation (NPC) docketed as Civil Case No. I-197 which was raffled to the Regional Trial Court (RTC) of Ipil, Zamboanga Sibugay, Branch 24. Appearing as counsel for Chu is Atty. Richard B. Rambuyong (Atty. Rambuyong) who was then the incumbent Vice-Mayor of Ipil, Zamboanga Sibugay.

Thereafter, NPC filed a Motion for Inhibition[3] of Atty. Rambuyong arguing that under Section 90 (b), (1) of Republic

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[1] *Rollo*, pp. 50-55; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Lucenito N. Tagle and Romulo V. Borja.

[2] *Id.* at 56; penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Normandie B. Pizzaro.

[3] CA *rollo*, pp. 33-37.

Act (RA) No. 7160, otherwise known as the Local Government Code, *sanggunian* members are prohibited "to appear as counsel before any court wherein x x x any office, agency or instrumentality of the government is the adverse party." NPC contended that being a government-owned or controlled corporation, it is embraced within the term "instrumentality."

Ruling of the Regional Trial Court

In an Order[4] dated January 4, 2002, the RTC ruled that government-owned or controlled corporations are expressly excluded from Section 90 (b), (1) of the Local Government Code. Citing other provisions of the Local Government Code wherein the phrase "including government-owned or controlled corporations" is explicitly included, the trial court held that if it was the intention of the framers of RA 7160 to impose obligations or give rights and privileges to local government units, agencies, instrumentalities or corporate entities, then they would have explicitly stated so. The RTC further held that "to insistently maintain that 'government-owned or controlled corporations' are included in the signification of 'agency and instrumentality of the government' x x x would be leaving behind what is apparent in favor of opening the door to the realm of presumption, baseless conjecture and even absurdity."[5]

The dispositive portion of the Order reads:

WHEREFORE, upon the foregoing disquisition, the defendant's motion is DENIED due course, and this Court declares:

1. Sec. 90 of R.A. 7160 does not include government-owned or controlled corporations as among the political units against which lawyer members of the Sanggunian cannot appear as counsel of the adverse party;

2. That Atty. Richard B. Rambuyong, who is the incumbent Vice-Mayor of the Municipality of Ipil, Zamboanga Sibugay, is not disqualified to continue acting as counsel for the plaintiff in this case.

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[4] *Id*. at 25-30; penned by Judge Demosthenes B. Manginsay.

[5] *Id*. at 29.

SO ORDERED.[6]

Petitioner filed a motion for reconsideration but it was denied.[7]

Hence, petitioner filed a petition for *certiorari* with the CA alleging grave abuse of discretion on the part of the trial judge in ruling that the statutory prohibition pertaining to the private practice of law by *sanggunian* members does not apply to cases where the adverse party is a government-owned or controlled corporation.

Ruling of the Court of Appeals

On May 20, 2004, the CA dismissed the petition for lack of merit. The CA pointed out that for *certiorari* to lie, there must be a capricious, arbitrary and whimsical exercise of power. It held that there was no showing that the trial judge exercised his power of judgment capriciously, arbitrarily and whimsically. Neither did it find proof that the trial judge, in making the rulings, was motivated by passion or personal hostility towards the petitioner.

It ruled that if ever there has been an erroneous interpretation of the law, the same may be attributed to a mere error of judgment which is definitely not the same as "grave abuse of discretion." The dispositive portion of the Decision states:

WHEREFORE, in view of the foregoing, the instant petition is DISMISSED.

SO ORDERED.[8]

The motion for reconsideration of NPC was denied. Hence, the present petition.

Issues

Petitioner raises the following arguments:

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[6] *Id*.

[7] *Id*. at 30-32.

[8] *Rollo*, p. 54.

I

BOTH THE LOCAL GOVERNMENT CODE AND THE 1987 ADMINISTRATIVE [CODE] ESSENTIALLY REQUIRE ATTY. RAMBUYONG TO INHIBIT HIMSELF FROM ACTING AS COUNSEL AGAINST NPC IN THE PROCEEDINGS BELOW.

II

NPC IS INCLUDED IN THE TERM "INSTRUMENTALITY" OF GOVERNMENT.

III

THE PROHIBITION IN SECTION 90(b), (1) OF RA 7160 INTENDS TO PREVENT PUBLIC OFFICIALS FROM REPRESENTING INTEREST ADVERSE TO THE GOVERNMENT.

IV

BACANI CASE IS NO LONGER THE PREVAILING JURISPRUDENCE ON THE REAL MEANING OF GOVERNMENT INSTRUMENTALITIES.

V

ATTY. RICHARD RAMBUYONG IS THE REAL-PARTY-IN-INTEREST IN THE SUBJECT PETITION.[9]

In the main the issue is whether NPC is an instrumentality of government such that Atty. Rambuyong, as a *sanggunian* member, should not appear as counsel against it.

Petitioner's Arguments

Petitioner contends that the trial court refused to apply the law, specifically Section 90 (b), (1) of RA 7160, which clearly states that lawyer-*sanggunian* members cannot appear as counsel in any case where the adverse party is a local government unit, office, agency or instrumentality. It argues that courts are not authorized to distinguish where the law makes no distinction.

Petitioner alleges that the RTC gravely abused its discretion when it failed to recognize that the 1987 Administrative Code

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[9] *Id.* at 114-115.

and the Local Government Code are in *pari materia* in defining the terms used in the latter, such as "office, agency or instrumentality." It argues that the RTC acted beyond the scope of its jurisdiction when it constricted the definition of "instrumentality" in Section 90 (b), (1) of RA 7160 to exclude government-owned and controlled corporations.

Petitioner argues that NPC is an instrumentality of government and that there is no cogent reason to exclude government-owned and controlled corporations from the operation of Section 90 (b), (1) of RA 7160.

Finally, petitioner claims that the government's challenge against Atty. Rambuyong's appearance is directed against him alone to the exclusion of his client whose right to prosecute his claim as party litigant is beyond question.

Respondent's Arguments

On the other hand, respondent contends that the party who would be benefited or injured by the compulsory inhibition of plaintiff's counsel is the plaintiff in Civil Case No. I-197. Thus, he insists that the plaintiff is the real party in interest and his (Atty. Rambuyong) inclusion as respondent in the present petition is erroneous.

Our Ruling

The petition has merit.

Instrumentality of the Government

The provisions of law relevant to the present case state:

Sec. 90.[10] *Practice of Profession*. — (a) All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation, other than the exercise of their functions as local chief executives.

(b) *Sanggunian* members may practice their professions, engage in any occupation, or teach in schools except during session hours:

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[10] Local Government Code.

Provided, That *sanggunian* members who are also members of the Bar shall not:

> (1) Appear as counsel before any court in any civil case wherein a local government unit or any office, agency, or instrumentality of the government is the adverse party;

x x x x x x x x x

Sec. 5.[11] *Rules of Interpretation*. — In the interpretation of the provisions of this Code, the following rules shall apply:

x x x x x x x x x

(e) In the resolution of controversies arising under this Code **where no legal provision or jurisprudence applies**, resort may be had to the customs and traditions in the place where the controversies take place. (Emphasis supplied.)

Sec. 2.[12] *General Terms Defined*. — Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:

x x x x x x x x x

(4) "Agency of the Government" refers to any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporations, or a local government or a distinct unit therein.

x x x x x x x x x

(10) Instrumentality — refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. **This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.** (Emphasis supplied.)

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[11] Local Government Code.

[12] Administrative Code of 1987.

In *Aparri v. Court of Appeals*,[13] the Court instructs:

> It is the rule in statutory construction that if the words and phrases of a statute are not obscure or ambiguous, its meaning and the intention of the legislature must be determined from the language employed, and, where there is no ambiguity in the words, there is no room for construction. The courts may not speculate as to the probable intent of the legislature apart from the words. The reason for the rule is that the legislature must be presumed to know the meaning of words, to have used words advisedly and to have expressed its intent by use of such words as are found in the statute.

Section 2 of the Administrative Code of 1987 is clear and unambiguous. It categorically provides that the term "instrumentality" includes government-owned or controlled corporations. Hence there is no room for construction. All that has to be done is to apply the law as called for by the circumstances of the case. It is not disputed that the NPC is a government-owned or controlled corporation. Therefore following Section 2 of the Administrative Code of 1987, the NPC is clearly an instrumentality of the government.

It is also significant to point out that in *Maceda v. Macaraig, Jr.*[14] the Court stated that "[t]he NPC is a government instrumentality with the enormous task of undertaking development of hydroelectric generation of power and production of electricity from other sources, as well as the transmission of electric power on a nationwide basis, to improve the quality of life of the people pursuant to the State policy embodied in Section [9], Article II of the 1987 Constitution."

Given the categorical words of both the law and jurisprudence, to still go to extra-ordinary lengths to interpret the intention of the lawmakers and come out with the construction that a government-owned or controlled corporation like the NPC is not included within the term "instrumentality of the government" is grave abuse of discretion.

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[13] 212 Phil. 215, 224-225 (1984). Citations omitted.

[14] 274 Phil. 1060, 1101 (1991).

"By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction."[15] "Grave abuse of discretion is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism."[16]

The strained and contrary interpretation of clearly worded provisions of law, which therefore should be merely applied and not interpreted, is an earmark of despotism and grave abuse of discretion.

Finally, Section 446 of the Local Government Code provides that "[t]he *sangguniang bayan*, the legislative body of the municipality, shall be composed of the municipal vice mayor as the presiding officer x x x." Thus, pursuant to Sec. 90 (b), (1) of the Local Government Code, Atty. Rambuyong, as *sanggunian* member, cannot appear as counsel of a party adverse to the NPC, which is an instrumentality of government.

WHEREFORE, the petition is *GRANTED*. The May 20, 2004 Decision and April 13, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 72800 are *REVERSED* and *SET ASIDE*. Atty. Richard B. Rambuyong is disqualified from appearing in Civil Case No. I-197.

SO ORDERED.

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

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[15] *Banal III v. Panganiban*, G.R. No. 167474, November 15, 2005, 475 SCRA 164, 174.

[16] *Ferrer v. Office of the Ombudsman*, G.R. No. 129036, August 6, 2008, 561 SCRA 51, 65.

SECOND DIVISION

[G.R. No. 175501. October 4, 2010]

MANILA WATER COMPANY, INC., *petitioner, vs.* **JOSE J. DALUMPINES, EMMANUEL CAPIT, ROMEO B. CASTOLONE, MELITANTE CASTRO, NONITO FERNANDEZ, ARNULFO JAMISON, ARTHUR LAVISTE, ESTEBAN LEGARTO, SUSANO MIRANDA, RAMON C. REYES, JOSE SIERRA, BENJAMIN TALAVERA, MOISES ZAPATERO, EDGAR PAMORAGA, BERNARDO S. MEDINA, MELENCIO M. BAONGUIS, JR., JOSE AGUILAR, ANGEL C. GARCIA, JOSE TEODY P. VELASCO, AUGUSTUS J. TANDOC, ROBERTO DAGDAG, MIGUEL LOPEZ, GEORGE CABRERA, ARMAN BORROMEO, RONITO R. FRIAS, ANTONIO VERGARA, RANDY CORTIGUERRA, and FIRST CLASSIC COURIER SERVICES, INC.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; CONTRACTING OR SUBCONTRACTING; DEFINED.— *"Contracting"* or *"subcontracting"* refers to an arrangement whereby a 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. Contracting and subcontracting arrangements are expressly allowed by law but are subject to regulation for the promotion of employment and the observance of the rights of workers to just and humane conditions of work, security of tenure, self-organization, and collective bargaining.

2. ID.; ID.; JOB CONTRACTING; WHEN PERMISSIBLE.— In legitimate contracting, the trilateral relationship between the parties in these arrangements involves the principal which

decides to farm out a job or service to a contractor or subcontractor, which has the capacity to independently undertake the performance of the job, work, or service, and the contractual workers engaged by the contractor or subcontractor to accomplish the job, work, or service. Job contracting is permissible only if the following conditions are met: 1) the contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and 2) the contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of the business.

3. ID.; ID.; LABOR-ONLY CONTRACTING; ELEMENTS.— [T]he Labor Code expressly prohibits "labor-only" contracting. Article 106 of the Code provides that there is labor-only contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and to the same extent as if the latter were directly employed by him. Department Order No. 18-02, Series of 2002, enunciates that labor-only contracting refers to an arrangement where the contractor or subcontractor merely recruits, supplies, or places workers to perform a job, work, or service for a principal, and any of the following elements are present: (i) the contractor or subcontractor does not have substantial capital or investment which relates to the job, work, or service to be performed and the employees recruited, supplied, or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or (ii) the contractor does not exercise the right to control the performance of the work of the contractual employee.

4. ID.; ID.; JOB CONTRACTING; PERMISSIBLE JOB CONTRACTING; SUBSTANTIAL CAPITAL OR INVESTMENT; DEFINED.— *"Substantial capital or investment"* refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries, and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work, or service contracted out.

5. ID.; ID.; ID.; ID.; RIGHT TO CONTROL; DEFINED.— The *"right to control"* refers to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

6. ID.; ID.; LABOR-ONLY CONTRACTING; PRESENT IN CASE AT BAR.— In the instant case, the CA found that FCCSI is a labor-only contractor. Based on the factual findings of the CA, FCCSI does not have substantial capital or investment to qualify as an independent contractor x x x. As correctly ruled by the CA, FCCSI's capitalization may not be considered substantial considering that it had close to a hundred collectors covering the east zone service area of Manila Water customers. The allegation in the position paper of FCCSI that it serves other companies' courier needs does not "cure" the fact that it has insufficient capitalization to qualify as independent contractor. Neither did FCCSI prove its allegation by substantial evidence other than by their self-serving declarations. What is evident is that it was Manila Water that provided the equipment and service vehicles needed in the performance of the contracted service, even if the contract between FCCSI and Manila Water stated that it was the Contractor which shall furnish at its own expense all materials, tools, and equipment needed to perform the tasks of collectors.

7. ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS.— The elements to determine the existence of an employment relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct. The most important of these elements

is the employer's control of the employee's conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish it.

8. ID.; ID.; ID.; CONTROL TEST; MERELY CALLS FOR THE EXISTENCE OF THE RIGHT TO CONTROL, AND NOT NECESSARILY THE EXERCISE THEREOF.— It should be remembered that the control test merely calls for the existence of the right to control, and not necessarily the exercise thereof. It is not essential that the employer actually supervises the performance of duties of the employee. It is enough that the former has a right to wield the power.

9. ID.; LABOR RELATIONS; REGULAR EMPLOYMENT; PRIMARILY DETERMINED BY THE REASONABLE CONNECTION BETWEEN THE PARTICULAR ACTIVITY PERFORMED BY THE EMPLOYEE IN RELATION TO THE USUAL BUSINESS OR TRADE OF THE EMPLOYER; CASE AT BAR.— Respondent bill collectors are, therefore, employees of petitioner Manila Water. It cannot be denied that the tasks performed by respondent bill collectors are directly related to the principal business or trade of Manila Water. Payments made by the subscribers are the lifeblood of the company, and the respondent bill collectors are the ones who collect these payments. The primary standard of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. In this case, the connection is obvious when we consider the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Finally, the repeated and continuing need for the performance of the job is sufficient evidence of the necessity, if not indispensability of the activity to the business.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioner.

Roldan & Roldan Law Offices for First Classic Courier Services, Inc.

Florencio C. Lameyro, Esq. for individual respondents.

D E C I S I O N

NACHURA,* ***J.*****:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated September 12, 2006 and the Resolution[2] dated November 17, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 94909.

The facts of the case are as follows:

By virtue of Republic Act No. 8041, otherwise known as the "National Water Crisis Act of 1995," the Metropolitan Waterworks and Sewerage System (MWSS) was given the authority to enter into concession agreements allowing the private sector in its operations. Petitioner Manila Water Company, Inc. (Manila Water) was one of two private concessionaires contracted by the MWSS to manage the water distribution system in the east zone of Metro Manila. The east service area included the following towns and cities: Mandaluyong, Marikina, Pasig, Pateros, San Juan, Taguig, Makati, parts of Quezon City and Manila, Angono, Antipolo, Baras, Binangonan, Cainta, Cardona, Jala-Jala, Morong, Pililla, Rodriguez, Tanay, Taytay, Teresa, and San Mateo.[3]

Under the concession agreement, Manila Water undertook to absorb the regular employees of MWSS listed by the latter effective August 1, 1997. Individual respondents, with the exception of Moises Zapatero (Zapatero) and Edgar Pamoraga (Pamoraga), were among the one hundred twenty-one (121) employees not included in the list of employees to be absorbed by Manila Water. Nevertheless, Manila Water engaged their

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* In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 28, 2010.

[1] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Lucas P. Bersamin (now a member of this Court) and Monina Arevalo-Zenarosa, concurring; *rollo*, pp. 572-603.

[2] *Id.* at 637.

[3] *Id.* at 573.

services without written contract from August 1, 1997 to August 31, 1997.[4]

On September 1, 1997, individual respondents signed a three (3)-month contract to perform collection services on commission basis for Manila Water's branches in the east zone.[5]

On November 21, 1997, before the expiration of the contract of services, the 121 bill collectors formed a corporation duly registered with the Securities and Exchange Commission (SEC) as the "Association Collector's Group, Inc." (ACGI). ACGI was one of the entities engaged by Manila Water for its courier service. However, Manila Water contracted ACGI for collection services only in its Balara Branch.[6]

In December 1997, Manila Water entered into a service agreement with respondent First Classic Courier Services, Inc. (FCCSI) also for its courier needs. The service agreements between Manila Water and FCCSI covered the periods 1997 to 1999 and 2000 to 2002.[7] Earlier, in a memorandum dated November 28, 1997, FCCSI gave a deadline for the bill collectors who were members of ACGI to submit applications and letters of intent to transfer to FCCSI. The individual respondents in this case were among the bill collectors who joined FCCSI and were hired effective December 1, 1997.[8]

On various dates between May and October 2002, individual respondents were terminated from employment. Manila Water no longer renewed its contract with FCCSI because it decided to implement a "collectorless" scheme whereby Manila Water customers would instead remit payments through "Bayad Centers."[9] The aggrieved bill collectors individually filed

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[4] *Id.*

[5] *Id.*

[6] *Id.* at 294-295, 573.

[7] *Id.* at 295.

[8] *Id.* at 295, 574.

[9] *Id.* at 574.

complaints for illegal dismissal, unfair labor practice, damages, and attorney's fees, with prayer for reinstatement and backwages against petitioner Manila Water and respondent FCCSI. The complaints were consolidated and jointly heard.[10]

Respondent bill collectors alleged that their employment under Manila Water had four (4) stages: (a) from August 1, 1997 to August 31, 1997; (b) from September 1, 1997 to November 30, 1997; (c) in November 1997 when FCCSI was incorporated; and (d) after November 1977 when FCCSI came in. While in MWSS, and thereafter in Manila Water and FCCSI, respondent bill collectors were made to perform the following functions: (1) delivery of bills to customers; (2) collection of payments from customers; and (3) delivery of disconnection notice to customers. They were also allowed to effect disconnection and were given tools for this purpose.[11]

Respondent bill collectors averred that when Manila Water issued their individual contracts of service for three months in September 1997, there was already an attempt to make it appear that respondent bill collectors were not its employees but independent contractors. Respondent bill collectors stressed that they could not qualify as independent contractors because they did not have an independent business of their own, tools, equipment, and capitalization, but were purely dependent on the wages they earned from Manila Water, which was termed as "commission."[12]

Respondent bill collectors alleged that Manila Water had complete supervision over their work and their collections, which they had to remit daily to the former. They also maintained that the incorporation of ACGI did not mean that they were not employees of Manila Water. Furthermore, they alleged that they suffered injustice when Manila Water imposed upon them the work set-up that caused them to be emotionally depressed because

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[10] *Id.* at 292, 575.

[11] *Id.* at 575.

[12] *Id.*

those who were not assigned to the Balara Branch under Manila Water's contract with ACGI were forced to join FCCSI to retain their employment. They argued that the entry of FCCSI did not change the employer-employee relationship of respondent bill collectors with Manila Water.[13]

Respondent bill collectors insisted that they remained employees of Manila Water even after the entry of FCCSI. The latter did not qualify as a legitimate labor contractor since it had no substantial capital. FCCSI only had a paid-up capital of one hundred thousand pesos (₱100,000.00), out of the four hundred thousand pesos (₱400,000.00) authorized capital. FCCSI relied mainly on what Manila Water would pay, from which it deducted an agency fee, and it had no other clients on collection. They were forced to transfer to FCCSI when their service contracts with Manila Water was about to expire on November 30, 1997. FCCSI was engaged in labor-only contracting which is prohibited by law.[14]

Respondent bill collectors averred that even under the four-fold test of employer-employee relationship, it appeared that Manila Water was their true employer based on the following circumstances: (1) it was Manila Water who engaged their services as bill collectors when it took over the operations of the east zone from MWSS on August 1, 1997; (2) it was Manila Water which paid their wages in the form of commissions every fifteenth (15th) and thirtieth (30th) day of each month; (3) Manila Water exercised the power of dismissal over them as bill collectors as evidenced by the instances surrounding their termination as set forth in their respective affidavits, and by the individual clearances issued to them not by FCCSI but by Manila Water, stating that the same was "issued in connection with his termination of contract as Contract Collector of Manila Water Company"; and (4) their work as bill collectors was clearly related to the principal business of Manila Water.[15]

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[13] *Id*.

[14] *Id.* at 575-576.

[15] *Id*. at 576.

Respondent FCCSI, on the other hand, claimed that it is an independent contractor engaged in the business of providing messengerial or courier services, and it fulfills the criteria set forth under Department Order No. 10, Series of 1997.[16] It was issued a certificate of registration by the Department of Labor and Employment (DOLE) as an independent contractor. It was incorporated and registered with the SEC in November 1995. It was duly registered with the Department of Transportation and Communication (DOTC) and the Office of the Mayor of Makati City for authority to operate. It has sufficient capital in the form of tools, equipment, and machinery as attested to by the Postal Regulation Committee of the DOTC after conducting an ocular inspection. It provides similar services to Philippine Long Distance Telephone Company, Smart Telecommunications, Inc., and Home Cable, Inc. Under the terms and conditions of its service agreement with Manila Water, FCCSI has the power to hire, assign, discipline, or dismiss its own employees, as well as control the means and methods of accomplishing the assigned tasks, and it pays the wages of the employees.[17]

The termination of employment of respondent bill collectors upon the expiration of FCCSI's contract with Manila Water did not mean the automatic termination or suspension of the employer-employee relationship between FCCSI and respondent bill collectors. Their termination after their six (6) month floating status, which was allowed by law, was due to the non-renewal of FCCSI's agreement with Manila Water and its inability to enter into a similar contract requiring the skills of respondent bill collectors.[18]

Petitioner Manila Water, for its part, denied that there was an employer-employee relationship between its company and

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[16] Department Order No. 10, Series of 1997, otherwise known as the rules implementing Articles 106 to 109 of Book III of the Labor Code, was revoked by Department Order No. 03, Series of 2001. The new department order continued to prohibit labor-only contracting.

[17] *Rollo*, pp. 576-577.

[18] *Id.* at 577.

respondent bill collectors. Based on the agreement between FCCSI and Manila Water, respondent bill collectors are the employees of the former, as it is the former that has the right to select/ hire, discipline, supervise, and control. FCCSI has a separate and distinct legal personality from Manila Water, and it was duly registered as an independent contractor before the DOLE.[19]

Petitioner further claimed that individual service contracts signed by respondent bill collectors for a 3-month period with Manila Water were valid and legal. The fact that the duration of the engagement was stated on the face of the contract dispels any bad faith on the part of the company. Fixed term contracts are allowed by law. Furthermore, respondent bill collectors' allegation that the incorporation of ACGI was made as a condition of their continued employment was unfounded. They transferred to FCCSI on their own volition.[20]

Petitioner Manila Water also averred that, under its organizational structure, there was no regular *plantilla* position of bill collector, which was the main reason why respondent bill collectors were not included in the list of MWSS employees absorbed by the company. The company's out-sourcing of courier needs to an independent contractor was valid and legal.

On September 27, 2004, the Labor Arbiter (LA) rendered a decision,[21] the dispositive portion of which reads:

> WHEREFORE, premises considered, the complaints against respondent **Manila Water Company, Inc.** is dismissed for lack of jurisdiction due to want of employer-employee relationship. Respondent **First Classic Courier Services** is hereby ordered to pay complainants separation pay equivalent to one (1) month pay for every year of service, to wit:
>
> 1. JOSE P. DALUMPINES - - - - - - - - - ₱36,400.00
> 2. SUSANO MIRANDA - - - - - - - - - ₱36,400.00

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[19] *Id*.

[20] *Id*.

[21] Penned by Executive Labor Arbiter Fatima Jamabro-Franco; *id*. at 291-320.

3.	EDGAR PAMORAGA - - - - - - - - -	₱29,120.00
4.	ARTHUR G. LAVISTI - - - - - - - - -	₱36,400.00
5.	BENJAMIN TALAVERA, JR. - - - - - -	₱36,400.00
6.	JOSE S.A. SIERRA - - - - - - - - -	₱36,400.00
7.	MELITANTE D. CASTRO - - - - - - - -	₱36,400.00
8.	BERNARDO S. MEDINA - - - - - - - -	₱36,400.00
9.	MELENCIO BAONGUIS- - - - - - - - -	₱36,400.00
10.	NONITO V. FERNANDEZ- - - - - - - -	₱36,400.00
11.	LEGARTO ESTEBAN - - - - - - - - -	₱36,400.00
12.	ROMEO B. CASTALONE - - - - - - - -	₱36,400.00
13.	RAMON C. REYES - - - - - - - - -	₱36,400.00
14.	MOISES L. ZAPATERO - - - - - - - - -	₱29,120.00
15.	JOSE T. AGUILAR - - - - - - - - -	₱36,400.00
16.	ARNULFO T. JAMISON - - - - - - - - -	₱36,400.00
17.	ANGEL C. GARCIA - - - - - - - - -	₱36,400.00
18.	JOSE TEODY P. VELASCO - - - - - -	₱36,400.00
19.	AUGUSTUS J. TANDOC- - - - - - - - -	₱36,400.00
20.	EMMANUEL L. CAPIT - - - - - - - -	₱36,400.00
21.	WILLIAM AGANON - - - - - - - - -	₱87,360.00
22.	ROBERTO S. DAGDAG - - - - - - - - -	₱36,400.00
23	MIGUEL J. LOPEZ - - - - - - - - -	₱36,400.00
24.	GEORGE CABRERA - - - - - - - - -	₱36,400.00
25.	BORROMEO ARMAN - - - - - - - - -	₱36,400.00
26.	RONITO R. FRIAS - - - - - - - - -	₱36,400.00
27.	ANTONIO A. VERGARA- - - - - - - - -	₱36,400.00
28.	RANDY T. CORTIGUERRA - - - - - -	₱36,400.00
	TOTAL - - -	₱1,055,600.00

SO ORDERED.[22]

Respondent bill collectors and FCCSI filed their separate appeals with the National Labor Relations Commission (NLRC). On March 15, 2006, the NLRC rendered a decision[23] affirming *in toto* the decision of the LA. Respondent bill collectors filed a motion for reconsideration, but the same was denied in a resolution[24] dated April 28, 2006.

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[22] *Id.* at 319-320.

[23] Penned by Presiding Commissioner Lourdes C. Javier; *id.* at 406-428.

[24] *Id.* at 450-451.

Disgruntled, respondent bill collectors filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. On September 12, 2006, the CA rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for accordingly GRANTED. Consequently, the assailed Decision dated March 15, 2006 and Resolution dated April 28, 2006 of the National Labor Relations Commission are hereby ANNULED and SET ASIDE. A new judgment is hereby entered (a) declaring the petitioners as employees of private respondent Manila Water Company, Inc., and their termination as bill collectors as illegal; and (b) ordering private respondent Manila Water Company, Inc. to pay the petitioners separation pay equivalent to one (1) month for every year of service. In addition, private respondent Manila Water Company, Inc. is liable to pay ten percent (10%) of the total amount awarded as attorney's fees.
>
> No pronouncement as to costs.
>
> SO ORDERED.[25]

Petitioner Manila Water and respondent bill collectors filed a motion for reconsideration. However, the CA denied their respective motions for reconsideration in a Resolution dated November 17, 2006.

Hence, this petition.

Petitioner Manila Water presented the following issues for resolution, whether the CA erred (1) in ruling that an employment relationship exists between respondent bill collectors and petitioner Manila Water; (2) in its application of *Manila Water Company, Inc. v. Peña*[26] to the instant case; and (3) in ruling that respondent FCCSI is not a bona fide independent contractor.[27]

The petition is bereft of merit.

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[25] *Id.* at 602.

[26] 478 Phil. 68 (2004).

[27] *Rollo*, p. 799.

In this case, the LA, the NLRC, and the CA reached different conclusions of law albeit agreeing on the same set of facts. It was in their interpretation and appreciation of the evidence that they differed. The CA ruled that respondent FCCSI was a labor-only contractor and that respondent bill collectors are employees of petitioner Manila Water, while the LA and the NLRC ruled otherwise.

"*Contracting*" or "*subcontracting*" refers to an arrangement whereby a 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.[28]

Contracting and subcontracting arrangements are expressly allowed by law but are subject to regulation for the promotion of employment and the observance of the rights of workers to just and humane conditions of work, security of tenure, self-organization, and collective bargaining.[29] In legitimate contracting, the trilateral relationship between the parties in these arrangements involves the principal which decides to farm out a job or service to a contractor or subcontractor, which has the capacity to independently undertake the performance of the job, work, or service, and the contractual workers engaged by the contractor or subcontractor to accomplish the job, work, or service.[30]

Job contracting is permissible only if the following conditions are met: 1) the contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and 2) the contractor has substantial capital or investment in the form of tools, equipment, machineries,

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[28] Department Order No. 18-02, Series of 2002, Sec. 4(a).

[29] Department Order No. 18-02, Series of 2002, Sec. 1.

[30] Department Order No. 18-02, Series of 2002, Sec. 3.

work premises, and other materials which are necessary in the conduct of the business.[31]

On the other hand, the Labor Code expressly prohibits "labor-only" contracting. Article 106 of the Code provides that there is labor-only contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and to the same extent as if the latter were directly employed by him.[32]

Department Order No. 18-02, Series of 2002, enunciates that labor-only contracting refers to an arrangement where the contractor or subcontractor merely recruits, supplies, or places workers to perform a job, work, or service for a principal, and any of the following elements are present: (i) the contractor or subcontractor does not have substantial capital or investment which relates to the job, work, or service to be performed and the employees recruited, supplied, or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or (ii) the contractor does not exercise the right to control the performance of the work of the contractual employee.[33]

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries, and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work, or service contracted

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[31] *Manila Water Company, Inc. v. Peña*, *supra* note 26, at 78, citing *De los Santos v. NLRC*, 423 Phil. 1020, 1032 (2001).

[32] Labor Code, Art. 106.

[33] Department Order No. 18-02, Series of 2002, Sec. 5.

out. The *"right to control"* refers to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.[34]

In the instant case, the CA found that FCCSI is a labor-only contractor. Based on the factual findings of the CA, FCCSI does not have substantial capital or investment to qualify as an independent contractor, *viz.*:

> FCCSI was incorporated on November 14, 1995, with an authorized capital stock of ₱400,000.00, of which only ₱100,000.00 is actually paid-in. Going by the pronouncement in *Peña*, such capitalization can hardly be considered substantial. FCCSI and Manila Water make much of the 17 April 1997 letter of Postal Regulation Committee Chairman Francisco V. Ontalan, Jr. to DOTC Secretary Arturo T. Enrile recommending the renewal and/or extension of authority to FCCSI to operate private messengerial delivery services, which states in part:
>
> > "Ocular inspection conducted on its office premises and evaluation of the documents submitted, the firm during the six (6) months operation has generated employment to thirty six (36) messengers, and four (4) office personnel.
> >
> > "The office equipt *[sic]* with modern facilities such as computers, printers, electric typewriter, working table, telephone lines, airconditioning unit, pigeon holes, working tables and *delivery vehicles such as a Suzuki van and three (3) motorcycles.* The firm's audited financial statement for the period ending 31 December 1996 [shows] that it earned a net income of ₱253,000.00. x x x."
>
> The above document only proves that FCCSI has no sufficient investment in the form of tools, equipment and machinery to undertake contract services for Manila Water involving a fleet of around 100 collectors assigned to several branches and covering the service area of Manila Water customers spread out in several cities/towns of the East Zone. The only rational conclusion is that it is Manila Water that provides most if not all the logistics and equipment including service vehicles in the performance of the contracted

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[34] *Id.*

service, notwithstanding that the contract between FCCSI and Manila Water states that it is the Contractor which shall furnish at its own expense all materials, tools and equipment needed to perform the tasks of collectors. Moreover, it must be emphasized that petitioners who are "trained collectors" performed tasks that cannot be simply categorized as "messengerial." In fact, these are the very functions they were already discharging even before they joined FCCSI which "invited" or "solicited" their placement just about the expiration of their three (3)-month contract with Manila Water on November 28, 1997. The Agreement between FCCSI and Manila Water provides that FCCSI shall "field the required number of trained collectors to the following Customer Relations Branch Office": Cubao, España, San Juan-Mandaluyong, Marikina, Pasig, Taguig-Pateros and Makati.[35]

As correctly ruled by the CA, FCCSI's capitalization may not be considered substantial considering that it had close to a hundred collectors covering the east zone service area of Manila Water customers. The allegation in the position paper of FCCSI that it serves other companies' courier needs does not "cure" the fact that it has insufficient capitalization to qualify as independent contractor. Neither did FCCSI prove its allegation by substantial evidence other than by their self-serving declarations. What is evident is that it was Manila Water that provided the equipment and service vehicles needed in the performance of the contracted service, even if the contract between FCCSI and Manila Water stated that it was the Contractor which shall furnish at its own expense all materials, tools, and equipment needed to perform the tasks of collectors.

Based on the four-fold test of employer-employee relationship, Manila Water emerges as the employer of respondent collectors. The elements to determine the existence of an employment relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct. The most important of these elements is the employer's control of the employee's conduct, not only as to the result of the work

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[35] *Rollo,* pp. 593-594.

to be done, but also as to the means and methods to accomplish it.[36]

The factual circumstances in the instant case are essentially the same as those cited in *Manila Water Company, Inc. v. Hermiño Peña*.[37] In that case, 121 bill collectors, headed by Peña, filed a complaint for illegal dismissal against Manila Water. The bill collectors formed ACGI which was registered with the SEC. Manila Water, in opposing the claim of the bill collectors, claimed that there was no employer-employee relationship with the latter. It averred that the bill collectors were employees of ACGI, a separate entity engaged in collection services, an independent contractor which entered into a service contract for the collection of Manila Water's accounts. The Court ruled that ACGI was not an independent contractor but was engaged in labor-only contracting, and as such, is considered merely an agent of Manila Water.[38]

The Court ratiocinated that: First, ACGI does not have substantial capitalization or investment in the form of tools, equipment, machineries, work premises, and other materials to qualify as an independent contractor. Second, the work of the bill collectors was directly related to the principal business or operation of Manila Water. Being in the business of providing water to the consumers in the east zone, the collection of the charges by the bill collectors for the company can only be categorized as related to, and in the pursuit of, the latter's business. Lastly, ACGI did not carry on an independent business or undertake the performance of its service contract in its own manner and using its own methods, free from the control and supervision of its principal, Manila Water. Since ACGI is obviously a labor-only contractor, the workers it supplied are considered employees of the principal. Furthermore, the activities performed

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[36] *Lopez v. Metropolitan Waterworks and Sewerage System*, 501 Phil. 115, 137 (2005); *Manila Water Company, Inc. v. Peña*, *supra* note 26, at 81.

[37] *Supra*.

[38] *Id*.

by the bill collectors were necessary or desirable to Manila Water's principal trade or business; thus, they are regular employees of the latter. Since Manila Water failed to comply with the requirements of termination under the Labor Code, the dismissal of the bill collectors was tainted with illegality.[39]

The similarity between the instant case and *Peña* is very evident. First, the work set-up between the respondent contractor FCCSI and respondent bill collectors is the same as in *Peña*. Respondent bill collectors were individually hired by the contractor, but were under the direct control and supervision of the concessionaire. Second, they performed the same function of courier and bill collection services. Third, the element of control exercised by Manila Water over respondent bill collectors is essentially the same as in *Peña,* manifested in the following circumstances, *viz*.: (a) respondent bill collectors reported daily to the branch offices of Manila Water to remit their collections with the specified monthly targets and comply with the collection reporting procedures prescribed by the latter; (b) respondent bill collectors, except for Pamoraga and Zapatero, were among the 121 collectors who incorporated ACGI; (c) Manila Water continued to pay their wages in the form of commissions even after the employees alleged transfer to FCCSI. Manila Water paid the respondent bill collectors their individual commissions, and the lump sum paid by Manila Water to FCCSI merely represented the agency fee; and (d) the certification or individual clearances issued by Manila Water to respondent bill collectors upon the termination of the service contract with FCCSI. The certification stated that respondents were contract collectors of Manila Water and not of FCCSI. Thus, this Court agrees with the findings of the CA that if, indeed, FCCSI was the true employer of the bill collectors, it should have been the one to issue the certification or individual clearances.

It should be remembered that the control test merely calls for the existence of the right to control, and not necessarily the exercise thereof. It is not essential that the employer actually

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[39] *Id*.

supervises the performance of duties of the employee. It is enough that the former has a right to wield the power.[40]

Respondent bill collectors are, therefore, employees of petitioner Manila Water. It cannot be denied that the tasks performed by respondent bill collectors are directly related to the principal business or trade of Manila Water. Payments made by the subscribers are the lifeblood of the company, and the respondent bill collectors are the ones who collect these payments.

The primary standard of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. In this case, the connection is obvious when we consider the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Finally, the repeated and continuing need for the performance of the job is sufficient evidence of the necessity, if not indispensability of the activity to the business.[41]

WHEREFORE, in view of the foregoing, the Decision dated September 12, 2006 and the Resolution dated November 17, 2006 of the Court of Appeals in CA-G.R. SP No. 94909 are hereby *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Velasco, Jr.,[**] *Peralta, Mendoza,* and *Sereno,*[***] *JJ.*, concur.

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[40] *Lopez v. Metropolitan Waterworks and Sewerage System*, *supra* note 36, at 133, citing *MAM Realty Development Corporation v. NLRC*, 314 Phil. 838, 842 (1995).

[41] *Lopez v. Metropolitan Waterworks and Sewerage System*, *supra* note 35, at 433, 453.

[**] Additional member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 897 dated September 28, 2010.

[***] Additional member in lieu of Associate Justice Roberto A. Abad per Special Order No. 903 dated September 28, 2010.

SECOND DIVISION

[G.R. No. 183626. October 4, 2010]

SURIGAO DEL NORTE ELECTRIC COOPERATIVE, INC. (SURNECO), *petitioner, vs.* **ENERGY REGULATORY COMMISSION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 7832 (ANTI-ELECTRICITY AND ELECTRIC TRANSMISSION LINES/MATERIAL PILFERAGE ACT OF 1994); SYSTEM LOSS; CAPS ON SYSTEM LOSS SHOULD BE APPLIED AS OF THE DATE OF THE EFFECTIVITY OF THE LAW.— SURNECO cannot insist on using the multiplier scheme even after the imposition of the system loss caps under Section 10 of R.A. No. 7832. The law took effect on January 17, 1995. Perusing Section 10, and also Section 11, providing for the application of the caps as of the date of the effectivity of R.A. No. 7832, readily shows that the imposition of the caps was self-executory and did not require the issuance of any enabling set of rules or any action by the then ERB, now ERC. Thus, the caps should have been applied as of January 17, 1995 when R.A. No. 7832 took effect.

2. ID.; ID.; ID.; SHOULD PREVAIL OVER AN ADMINISTRATIVE ISSUANCE, IT BEING A LEGISLATIVE ENACTMENT.— Indeed, under NEA Memorandum No. 1-A, the use of the multiplier scheme allows the recovery of system losses even beyond the caps mandated in R.A. No. 7832, which is intended to gradually phase out pilferage losses as a component of the recoverable system losses by the distributing utilities such as SURNECO. However, it is totally repugnant to and incompatible with the system loss caps established in R.A. No. 7832, and is repealed by Section 16 of the law. As between NEA Memorandum No. 1-A, a mere administrative issuance, and R.A. No. 7832, a legislative enactment, the latter must prevail.

3. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; ENERGY REGULATORY COMMISSION; HAS THE

AUTHORITY TO REGULATE AND APPROVE THE RATES IMPOSED BY THE ELECTRIC COOPERATIVES ON THEIR CONSUMERS; CASE AT BAR.— The ERC was merely implementing the system loss caps in R.A. No. 7832 when it reviewed and confirmed SURNECO'S PPA charges, and ordered the refund of the amount collected in excess of the allowable system loss caps through its continued use of the multiplier scheme. x x x In directing SURNECO to refund its over-recoveries based on PPA policies, which only ensured that the PPA mechanism remains a purely cost-recovery mechanism and not a revenue-generating scheme for the electric cooperatives, the ERC merely exercised its authority to regulate and approve the rates imposed by the electric cooperatives on their consumers. The ERC simply performed its mandate to protect the public interest imbued in those rates.

4. ID.; INHERENT POWERS OF THE STATE; POLICE POWER; VALIDLY EXERCISED WHERE THE STATE REGULATES THE RATES IMPOSED BY A PUBLIC UTILITY.— It is beyond cavil that the State, in the exercise of police power, can regulate the rates imposed by a public utility such as SURNECO. As we held in *Republic of the Philippines v. Manila Electric Company*—"The regulation of rates to be charged by public utilities is founded upon the police powers of the State and statutes prescribing rules for the control and regulation of public utilities are a valid exercise thereof. When private property is used for a public purpose and is affected with public interest, it ceases to be *juris privati* only and becomes subject to regulation. The regulation is to promote the common good. Submission to regulation may be withdrawn by the owner by discontinuing use; but as long as use of the property is continued, the same is subject to public regulation."

5. ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW OF STATUTES; STRIKING DOWN A LEGISLATIVE ENACTMENT, OR ANY OF ITS PROVISIONS, CAN BE DONE ONLY BY WAY OF A DIRECT ACTION AND NOT FOR THE FIRST TIME ON APPEAL AND THE CHALLENGE TO THE LAW'S CONSTITUTIONALITY SHOULD ALSO BE RAISED AT THE EARLIEST OPPORTUNITY.— SURNECO cannot validly assert that the caps set by R.A. No. 7832 are arbitrary, or that they violate the non-impairment clause of the Constitution for allegedly

traversing the loan agreement between NEA and ADB. Striking down a legislative enactment, or any of its provisions, can be done only by way of a direct action, not through a collateral attack, and more so, not for the first time on appeal in order to avoid compliance. The challenge to the law's constitutionality should also be raised at the earliest opportunity.

6. ID.; INHERENT POWERS OF THE STATE; POLICE POWER; POLICE POWER LEGISLATION PREVAILS NOT ONLY OVER FUTURE CONTRACTS BUT EVEN OVER THOSE ALREADY IN EXISTENCE.— Even assuming, merely for argument's sake, that the ERC issuances violated the NEA and ADB covenant, the contract had to yield to the greater authority of the State's exercise of police power. It has long been settled that police power legislation, adopted by the State to promote the health, morals, peace, education, good order, safety, and general welfare of the people prevails not only over future contracts but even over those already in existence, for all private contracts must yield to the superior and legitimate measures taken by the State to promote public welfare.

7. ID.; STATUTES; REPUBLIC ACT NO. 9136 (THE ELECTRIC POWER INDUSTRY REFORMS ACT OF 2001); ALLOWS THE SYSTEM LOSS CAPS IN R.A. NO. 7832 TO REMAIN UNTIL REPLACED BY THE CAPS TO BE DETERMINED BY THE ENERGY REGULATORY COMMISSION.— The EPIRA allows the caps to remain until replaced by the caps to be determined by the ERC, pursuant to its delegated authority under Section 43 of R.A. No. 9136 to prescribe new system loss caps, based on technical parameters such as load density, sales mix, cost of service, delivery voltage, and other technical considerations it may promulgate.

8. ID.; ID.; REPUBLIC ACT NO. 7832 (ANTI-ELECTRICITY AND ELECTRIC TRANSMISSION LINES/MATERIAL PILFERAGE ACT OF 1994): PURCHASED POWER ADJUSTMENT (PPA) FORMULA; THE PPA FORMULA PROVIDED IN THE IMPLEMENTING RULES AND REGULATIONS OF R.A. NO. 7832 WAS ONLY A MODEL TO BE USED AS A GUIDE BY THE ELECTRIC COOPERATIVES IN PROPOSING THEIR OWN PPA FORMULA FOR APPROVAL BY THEN ENERGY REGULATORY BOARD.— The PPA formula provided in the

IRR of R.A. No. 7832 was only a model to be used as a guide by the electric cooperatives in proposing their own PPA formula for approval by the then ERB. Sections 4 and 5, Rule IX of the IRR directed the electric cooperatives to apply for approval of such formula with the ERB so that the system loss caps under the law would be incorporated in their computation of power cost adjustments. The IRR did not provide for a specific formula; therefore, there was nothing in the IRR that was amended or could have been amended relative to the PPA formula. The IRR left to the ERB, now the ERC, the authority to approve and oversee the implementation of the electric cooperatives' PPA formula in the exercise of its rate-making power over them.

9. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; SIMPLY REQUIRES AN OPPORTUNITY TO EXPLAIN ONE'S SIDE OR TO SEEK RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF.— Administrative due process simply requires an opportunity to explain one's side or to seek reconsideration of the action or ruling complained of. It means being given the opportunity to be heard before judgment, and for this purpose, a formal trial-type hearing is not even essential. It is enough that the parties are given a fair and reasonable chance to demonstrate their respective positions and to present evidence in support thereof.

10. ID.; ID.; ID.; ID.; NOT VIOLATED IN CASE AT BAR.—Verily, the PPA confirmation necessitated a review of the electric cooperatives' monthly documentary submissions to substantiate their PPA charges. The cooperatives were duly informed of the need for other required supporting documents and were allowed to submit them accordingly. In fact, hearings were conducted. Moreover, the ERC conducted exit conferences with the electric cooperatives' representatives, SURNECO included, to discuss preliminary figures and to double-check these figures for inaccuracies, if there were any. In addition, after the issuance of the ERC Orders, the electric cooperatives were allowed to file their respective motions for reconsideration. It cannot be gainsaid, therefore, that SURNECO was not denied due process.

11. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE BODIES ON

TECHNICAL MATTERS WITHIN THEIR AREA OF EXPERTISE ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY.—[F]actual findings of administrative bodies on technical matters within their area of expertise should be accorded not only respect but even finality if they are supported by substantial evidence even if not overwhelming or preponderant, more so if affirmed by the CA. Absent any grave abuse of discretion on the part of ERC, we must sustain its findings. Hence, its assailed Orders, following the rule of non-interference on matters addressed to the sound discretion of government agencies entrusted with the regulation of activities coming their special technical knowledge and training, must be upheld.

APPEARANCES OF COUNSEL

Dechavez Bugayong Concepcion & Sagayo Law Offices for petitioner.

The Solicitor General for respondent.

D E C I S I O N

NACHURA,[*] *J.*:

Assailed in this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court are the Decision dated April 17, 2008[2] and the Resolution dated June 25, 2008[3] of the Court of Appeals (CA) in CA-G.R. SP No. 99781.

The antecedent facts and proceedings follow—

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[*] In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 28, 2010.

[1] *Rollo*, pp. 30-61.

[2] Penned by Associate Justice Mariano C. del Castillo (now a member of this Court), with Associate Justices Arcangelita Romilla-Lontok and Ricardo R. Rosario, concurring; *id.* at 10-22.

[3] *Id.* at 24-27.

Petitioner Surigao Del Norte Electric Cooperative, Inc. (SURNECO) is a rural electric cooperative organized and existing by virtue of Presidential Decree No. 269.

On February 8, 1996, the Association of Mindanao Rural Electric Cooperatives, as representative of SURNECO and of the other 33 rural electric cooperatives in Mindanao, filed a petition before the then Energy Regulatory Board (ERB) for the approval of the formula for automatic cost adjustment and adoption of the National Power Corporation (NPC) restructured rate adjustment to comply with Republic Act (R.A.) No. 7832.[4] The case was docketed as ERB Case No. 96-49, and later consolidated with identical petitions of other associations of electric cooperatives in the Philippines.

The relevant provisions of R.A. No. 7832 for compliance are Sections 10 and 14, which provide—

Sec. 10. *Rationalization of System Losses by Phasing Out Pilferage Losses as a Component Thereof.* — There is hereby established a cap on the recoverable rate of system losses as follows:

x x x x x x x x x

(b) For rural electric cooperatives:

(i) Twenty-two percent (22%) at the end of the first year following the effectivity of this Act;
(ii) Twenty percent (20%) at the end of the second year following the effectivity of this Act;
(iii) Eighteen percent (18%) at the end of the third year following the effectivity of this Act;
(iv) Sixteen percent (16%) at the end of the fourth year following the effectivity of this Act; and
(v) Fourteen percent (14%) at the end of the fifth year following the effectivity of this Act.

Provided, that the ERB is hereby authorized to determine at the end of the fifth year following the effectivity of this Act, and as often as is necessary, taking into account the viability of rural electric

[4] Otherwise referred to as the "Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994," which took effect on January 17, 1995.

cooperatives and the interest of consumers, whether the caps herein or theretofore established shall be reduced further which shall, in no case, be lower than nine percent (9%) and accordingly fix the date of the effectivity of the new caps.

x x x x x x x x x

Sec. 14. *Rules and Regulations.* —The ERB shall, within thirty (30) working days after the conduct of hearings which must commence within thirty (30) working days upon the effectivity of this Act, issue the rules and regulation as may be necessary to ensure the efficient and effective implementation of the provisions of this Act, to include but not limited to, the development of methodologies for computing the amount of electricity illegally used and the amount of payment or deposit contemplated in Section 7 hereof as a result of the presence of the *prima facie* evidence discovered.

Corollary thereto, Sections 4 and 5 of Rule IX of the Implementing Rules and Regulations (IRR) of R.A. No. 7832 provide—

Section 4. *Caps on System Loss allowed to Rural Electric Cooperatives.* — The maximum rate of system loss that the cooperative can pass on to its customers shall be as follows:

a. Twenty-two percent (22%) effective on February 1996 billing.
b. Twenty percent (20%) effective on February 1997 billing.
c. Eighteen percent (18%) effective on February 1998 billing.
d. Sixteen percent (16%) effective on February 1999 billing.
e. Fourteen percent (14%) effective on February 2000 billing.

Section 5. *Automatic Cost Adjustment Formula.* — Each and every cooperative shall file with the ERB, on or before September 30, 1995, an application for approval of an amended Purchased Power Adjustment Clause that would reflect the new system loss cap to be included in its schedule of rates.

The automatic cost adjustment of every electric cooperative shall be guided by the following formula:

Purchased Power Adjustment Clause

$$(PPA) = \frac{A}{B - (C + D)} E$$

Where:

A = Cost of electricity purchased and generated for the previous month

B = Total Kwh purchased and generated for the previous month

C = The actual system loss but not to exceed the maximum recoverable rate of system loss in Kwh plus actual company use in kwhrs but not to exceed 1% of total kwhrs purchased and generated

D = kwh consumed by subsidized consumers

E = Applicable base cost of power equal to the amount incorporated into their basic rate per kwh.

In an Order[5] dated February 19, 1997, the ERB granted SURNECO and other rural electric cooperatives provisional authority to use and implement the Purchased Power Adjustment (PPA) formula pursuant to the mandatory provisions of R.A. No. 7832 and its IRR, with a directive to submit relevant and pertinent documents for the Board's review, verification, and confirmation.

In the meantime, the passage of R.A. No. 9136[6] led to the creation of the Energy Regulatory Commission (ERC), replacing and succeeding the ERB. All pending cases before the ERB were transferred to the ERC. ERB Case No. 96-49 was re-docketed as ERC Case No. 2001-343.

In the Order dated June 17, 2003, the ERC clarified ERB's earlier policy regarding the PPA formula to be used by the electric cooperatives, *viz.*—

After a careful evaluation of the records, the Commission noted that the PPA formula which was approved by the ERB was silent on whether the calculation of the cost of electricity purchased and generated in the formula should be "gross" or "net" of the discounts.

Let it be noted that the power cost is said to be at "gross" if the discounts are not passed-on to the end-users whereas it is said to be at "net" if the said discounts are passed-on to the end-users.

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[5] *Rollo,* pp. 111-128.

[6] Also known as the Electric Power Industry Reforms Act of 2001 (EPIRA).

To attain uniformity in the implementation of the PPA formula, the Commission has resolved that:

1. In the confirmation of past PPAs, the power cost shall still be based on "gross," and

2. In the confirmation of future PPAs, the power cost shall be based on "net."

The electric cooperatives filed their respective motions for clarification and/or reconsideration. Hence, the ERC issued an Order[7] dated January 14, 2005, stating that the PPA was a cost-recovery mechanism, not a revenue-generating scheme, so that the distribution utilities or the electric cooperatives must recover from their customers only the actual cost of purchased power. The ERC thus adopted a new PPA policy, to wit—

A. The computation and confirmation of the PPA prior to the Commission's Order dated June 17, 2003 shall be based on the approved PPA Formula;

B. The computation and confirmation of the PPA after the Commission's Order dated June 17, 2003 shall be based on the power cost "net" of discount; and

C. If the approved PPA Formula is silent on the terms of discount, the computation and confirmation of the PPA shall be based on the power cost at "gross," subject to the submission of proofs that said discounts are being extended to the end-users.[8]

Thereafter, the ERC continued its review, verification, and confirmation of the electric cooperatives' implementation of the PPA formula based on the available data and information submitted by the latter.

On March 19, 2007, the ERC issued its assailed Order,[9] mandating that the discounts earned by SURNECO from its

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[7] *Rollo*, pp. 196-212.

[8] *Id.* at 204.

[9] *Id.* at 134-140.

power supplier should be deducted from the computation of the power cost, disposing in this wise —

WHEREFORE, the foregoing premises considered, the Commission hereby confirms the Purchased Power Adjustment (PPA) of Surigao del Norte Electric Cooperative, Inc. (SURNECO) for the period February 1996 to July 2004 which resulted to an over-recovery amounting to **EIGHTEEN MILLION ONE HUNDRED EIGHTY EIGHT THOUSAND SEVEN HUNDRED NINETY FOUR PESOS (PhP18,188,794.00)** equivalent to PhP0.0500/kwh. In this connection, SURNECO is hereby directed to refund the amount of PhP0.0500/kwh to its Main Island consumers starting the next billing cycle from receipt of this Order until such time that the full amount shall have been refunded.

The Commission likewise confirms the PPA of SURNECO for its Hikdop Island consumers for the period February 1996 to July 2004 which resulted to an under-recovery amounting to **TWO MILLION FOUR HUNDRED SEVENTY EIGHT THOUSAND FORTY FIVE PESOS (PhP2,478,045.00)**. SURNECO is hereby authorized to collect from its Hikdop Island consumers the amount of PhP0.0100/kwh starting the next billing cycle from receipt of this Order until such time that the full amount shall have been collected.

Accordingly, SURNECO is directed to:

a) Reflect the PPA refund/collection as a separate item in the bill using the phrase "Previous Years' Adjustment on Power Cost";

b) Submit, within ten (10) days from its initial implementation of the refund/collection, a sworn statement indicating its compliance with the aforecited directive; and

c) Accomplish and submit a report in accordance with the attached prescribed format, on or before the 30th day of January of the succeeding year and every year thereafter until the amount shall have been fully refunded/collected.

SO ORDERED.[10]

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[10] *Id.* at 139-140.

SURNECO filed a motion for reconsideration, but it was denied by the ERC in its Order[11] dated May 29, 2007 on the ground that the motion did not raise any new matter which was not already passed upon by the ERC.

Aggrieved, SURNECO went to the CA via a petition for review,[12] with prayer for the issuance of a temporary restraining order and preliminary injunction, seeking the annulment of the ERC Orders dated March 19, 2007 and May 29, 2007.

In its Decision dated April 17, 2008, the CA denied SURNECO's petition and affirmed the assailed Orders of the ERC.

On June 25, 2008, upon motion for reconsideration[13] of SURNECO, the CA issued its Resolution denying the same.

Hence, this petition, with SURNECO ascribing error to the CA and the ERC in: (1) disallowing its use of the multiplier scheme to compute its system's loss; (2) ordering it to deduct from the power cost or refund to its consumers the discounts extended to it by its power supplier, NPC; and (3) ordering it to refund alleged over-recoveries arrived at by the ERC without giving SURNECO the opportunity to be heard.

The petition should be denied.

First. SURNECO points out that the National Electrification Administration (NEA), which used to be the government authority charged by law with the power to fix rates of rural electric cooperatives, entered into a loan agreement with the Asian Development Bank (ADB). The proceeds of the loan were intended for use by qualified rural electric cooperatives, SURNECO included, in their rehabilitation and expansion projects. The loan agreement imposed a 15% system loss cap, but provided a Power Cost Adjustment Clause authorizing cooperatives to charge and show "system losses in excess of 15%" as a separate item in their consumer's bill. Thus, the cooperatives charged

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[11] *Id.* at 156-158.

[12] *Id.* at 159-195.

[13] *Id.* at 76-105.

their consumer-members "System Loss Levy" for system losses in excess of the 15% cap.

SURNECO states that, in January 1984, it was authorized by the NEA that all increases in the NPC power cost (in case of NPC-connected cooperatives) shall be uniformly passed on to the member-consumers using the 1.4 multiplier, which is divided into 1.3 as allowance for 23% system loss and 0.1 as provision for the corresponding increase in operating expenses to partly offset the effects of inflation.[14] Subsequently, the NEA, through NEA Memorandum No. 1-A dated March 30, 1992, revised the aforesaid issuance as follows—

> Pursuant to NEA Board Resolution No. 98, Series of 1991, x x x, the revised cooperatives' multiplier will be as follows:
>
> 1.2 – Rural Electric Cooperatives (RECs) with system loss of 15% and below;
> 1.3 – RECs with system loss ranging from 16% to 22%;
> 1.4 – RECs with system loss of 23% and above.

SURNECO posits that, per NEA Memorandum No. 1-A, the NEA had authorized it to adopt a multiplier scheme as the method to recover system loss. It claims that this cannot be abrogated, revoked, or superseded by any order, resolution, or issuance by the ERC prescribing a certain formula to implement the caps of recoverable rate of system loss under R.A. No. 7832 without violating the non-impairment clause[15] of the Constitution.

We disagree. SURNECO cannot insist on using the multiplier scheme even after the imposition of the system loss caps under Section 10 of R.A. No. 7832. The law took effect on January 17, 1995. Perusing Section 10, and also Section 11,[16] providing for the application of the caps as of the date of the effectivity

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[14] NEA Memo No. 1.

[15] CONSTITUTION, Article III, Section 10. "No law impairing the obligation of contracts shall be passed."

[16] Sec. 11. *Area of Coverage.* — The caps provided in Section 10 of this Act shall apply only to the area of coverage of private electric utilities and rural electric cooperatives as of the date of the effectivity of this Act.

of R.A. No. 7832, readily shows that the imposition of the caps was self-executory and did not require the issuance of any enabling set of rules or any action by the then ERB, now ERC. Thus, the caps should have been applied as of January 17, 1995 when R.A. No. 7832 took effect.

Indeed, under NEA Memorandum No. 1-A, the use of the multiplier scheme allows the recovery of system losses even beyond the caps mandated in R.A. No. 7832, which is intended to gradually phase out pilferage losses as a component of the recoverable system losses by the distributing utilities such as SURNECO. However, it is totally repugnant to and incompatible with the system loss caps established in R.A. No. 7832, and is repealed by Section 16[17] of the law. As between NEA Memorandum No. 1-A, a mere administrative issuance, and R.A. No. 7832, a legislative enactment, the latter must prevail.[18]

Second. The ERC was merely implementing the system loss caps in R.A. No. 7832 when it reviewed and confirmed SURNECO'S PPA charges, and ordered the refund of the amount collected in excess of the allowable system loss caps through its continued use of the multiplier scheme. As the ERC held in its March 19, 2007 Order—

> On January 14, 2005, the Commission issued an Order adopting a new PPA policy as follows: (a) the computation and confirmation of the PPA prior to the Commission's Order dated June 17, 2003 shall be based on the approved PPA Formula; (b) the computation and confirmation of the PPA after the Commission's Order dated June 17, 2003 shall be based on the power cost "net" of discount; and (c) if the approved PPA Formula is silent in terms of discount, the computation and confirmation of the PPA shall be based on the power cost at "gross" reduced by the amount of discounts extended to customers, subject to the submission of proofs that said discounts are indeed being extended to customers.

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[17] Sec. 16. *Repealing Clauses.* — x x x. All other laws, ordinances, rules, regulations, and other issuances or parts thereof, which are inconsistent with this Act, are hereby repealed or modified accordingly.

[18] *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, July 21, 2008, 559 SCRA 160, 178.

However, the Commission deemed it appropriate to clarify its PPA confirmation process particularly on the treatment of the Prompt Payment Discount (PPD) granted to distribution utilities (DUs) by their power suppliers, to wit:

I. The over-or-under recovery will be determined by comparing the allowable power cost with the actual revenue billed to end-users.

II. Calculation of the DU's allowable power cost as prescribed in the PPA formula:

   a. If the PPA formula explicitly provides the manner by which discounts availed from the power supplier/s shall be treated, the allowable power cost will be computed based on the specific provision of the formula, which may either be at "net" or "gross"; and

   b. If the PPA formula is silent in terms of discounts, the allowable power cost will be computed at "net" of discounts availed from the power supplier/s, if there be any.

III. Calculation of DU's actual revenues/actual amount billed to end-users.

   a. On actual PPA computed at net of discounts availed from power supplier/s:

      a.1. If a DU bills at net of discounts availed from the power supplier/s (*i.e.*, gross power cost minus discounts from power supplier/s) and the DU is not extending discounts to end-users, the actual revenue should be equal to the allowable power cost; and

      a.2. If a DU bills at net of discounts availed from the power supplier/s (*i.e.*, gross power cost minus discounts from power supplier/s) and the DU is extending discounts to end-users, the discount extended to end-users shall be added back to the actual revenue.

   b. On actual PPA computed at gross:

      b.1. If a DU bills at gross (*i.e.*, gross power cost not reduced by discounts from power

supplier/s) and the DU is extending discounts to end-users, the actual revenue shall be calculated as: gross power revenue less discounts extended to end-users. The result shall then be compared to the allowable power cost; and

b.2. If a DU bills at gross (*i.e.*, gross power cost not reduced by discounts from power supplier/s) and the DU is not extending discounts to end-users, the actual revenue shall be taken as is which shall be compared to the allowable power cost.

IV. In the calculation of the DU's actual revenues, the amount of discounts extended to end-users shall, in no case, be higher than the discounts availed by the DU from its power supplier/s.

The foregoing clarification was intended to ensure that only the actual costs of purchased power are recovered by the DUs.

In the meantime, SURNECO submitted reports on its monthly implementation of the PPA covering the period January 1998 to July 2004 and attended the conferences conducted by the Commission on December 11, 2003 and May 4, 2005 relative thereto.

The Commission evaluated SURNECO's monthly PPA implementation covering the period February 1996 to July 2004, which disclosed the following:

Schedule 1, Main Island

Period Covered	**Over (Under) Recoveries (In PhP)**	**Over (Under) Recoveries (In kWh)**
February 1996 to December 1998	20,737,074	0.2077
January 1999 to July 2004	(2,548,280)	(0.0097)
TOTAL	**18,188,794**	**0.0500**

Schedule 2, Municipality of Hikdop

February 1996 to December 1998 PPA Plus Basic Cha[r]ge	70,235	0.3190
January 1999 to July 2004	(2,548,280)	(0.0097)
TOTAL	**(2,478,045)**	**(0.0100)**

The over-recoveries were due to the following:

1. For the period February 1996 to December 1998, SURNECO's PPA computation included the power cost and the corresponding kWh purchased from Hikdop end-users. The Commission excluded those months which SURNECO did not impose variable charges to Hikdop end-user which resulted to a total net over-recovery of PhP21,245,034.00; and
2. SURNECO's basic charge for Hikdop end-users were beyond the approved basic charge for the period February 1996 to September 1998 resulting to a net over-recovery of PhP128,489.00.

SURNECO's under recoveries for the period January 1999 to June 2004 were due to the following:

1. For the period August 2001 to June 2004, SURNECO erroneously deducted the Power Act Reduction Adjustments (PARA) in the total purchased power cost of its PPA computation resulting to an under-recovery of PhP1,377,763.00;
2. SURNECO's power cost and kWh computation includes Dummy Load resulting to an under recovery amounting to PhP226,196.00; and
3. The new grossed-up factor scheme adopted by the Commission which provided a true-up mechanism to allow the DUs to recover the actual costs of purchased power.[19]

[19] *Rollo*, pp.135-139.

In directing SURNECO to refund its over-recoveries based on PPA policies, which only ensured that the PPA mechanism remains a purely cost-recovery mechanism and not a revenue-generating scheme for the electric cooperatives, the ERC merely exercised its authority to regulate and approve the rates imposed by the electric cooperatives on their consumers. The ERC simply performed its mandate to protect the public interest imbued in those rates.

It is beyond cavil that the State, in the exercise of police power, can regulate the rates imposed by a public utility such as SURNECO. As we held in *Republic of the Philippines v. Manila Electric Company*[20]—

> The regulation of rates to be charged by public utilities is founded upon the police powers of the State and statutes prescribing rules for the control and regulation of public utilities are a valid exercise thereof. When private property is used for a public purpose and is affected with public interest, it ceases to be *juris privati* only and becomes subject to regulation. The regulation is to promote the common good. Submission to regulation may be withdrawn by the owner by discontinuing use; but as long as use of the property is continued, the same is subject to public regulation.

Likewise, SURNECO cannot validly assert that the caps set by R.A. No. 7832 are arbitrary, or that they violate the non-impairment clause of the Constitution for allegedly traversing the loan agreement between NEA and ADB. Striking down a legislative enactment, or any of its provisions, can be done only by way of a direct action, not through a collateral attack, and more so, not for the first time on appeal in order to avoid compliance. The challenge to the law's constitutionality should also be raised at the earliest opportunity.[21]

Even assuming, merely for argument's sake, that the ERC issuances violated the NEA and ADB covenant, the contract had to yield to the greater authority of the State's exercise of

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[20] 440 Phil. 389, 397, citing *Munn v. People of the State of Illinois*, 94 U.S.113, 126 (1877).

[21] *Philippine National Bank v. Palma*, 503 Phil. 917, 932 (2005).

police power. It has long been settled that police power legislation, adopted by the State to promote the health, morals, peace, education, good order, safety, and general welfare of the people prevails not only over future contracts but even over those already in existence, for all private contracts must yield to the superior and legitimate measures taken by the State to promote public welfare.[22]

SURNECO also avers that the Electric Power Industry Reform Act of 2001 (EPIRA) removed the alleged arbitrary caps in R.A. No. 7832. We differ. The EPIRA allows the caps to remain until replaced by the caps to be determined by the ERC, pursuant to its delegated authority under Section 43[23] of R.A. No. 9136 to prescribe new system loss caps, based on technical parameters such as load density, sales mix, cost of service, delivery voltage, and other technical considerations it may promulgate.

Third. We also disagree with SURNECO in its insistence that the PPA confirmation policies constituted an amendment to the IRR of R.A. No. 7832 and must, therefore, comply with the publication requirement for the effectivity of administrative issuances.

The PPA formula provided in the IRR of R.A. No. 7832 was only a model to be used as a guide by the electric cooperatives in proposing their own PPA formula for approval by the then ERB. Sections 4 and 5, Rule IX of the IRR directed the electric cooperatives to apply for approval of such formula with the ERB so that the system loss caps under the law would be

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[22] *Serrano v. Gallant Maritime Services, Inc.*, G.R. No. 167614, March 24, 2009, 582 SCRA 254, 276, citing *Ortigas & Co., Ltd. v. Court of Appeals*, 400 Phil. 615, 623 (2000).

[23] Sec. 43. *Functions of the ERC.* — x x x.

f. x x x. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. x x x.

incorporated in their computation of power cost adjustments. The IRR did not provide for a specific formula; therefore, there was nothing in the IRR that was amended or could have been amended relative to the PPA formula. The IRR left to the ERB, now the ERC, the authority to approve and oversee the implementation of the electric cooperatives' PPA formula in the exercise of its rate-making power over them.

We likewise differ from SURNECO's stance that it was denied due process when the ERC issued its questioned Orders. Administrative due process simply requires an opportunity to explain one's side or to seek reconsideration of the action or ruling complained of.[24] It means being given the opportunity to be heard before judgment, and for this purpose, a formal trial-type hearing is not even essential. It is enough that the parties are given a fair and reasonable chance to demonstrate their respective positions and to present evidence in support thereof.[25]

Verily, the PPA confirmation necessitated a review of the electric cooperatives' monthly documentary submissions to substantiate their PPA charges. The cooperatives were duly informed of the need for other required supporting documents and were allowed to submit them accordingly. In fact, hearings were conducted. Moreover, the ERC conducted exit conferences with the electric cooperatives' representatives, SURNECO included, to discuss preliminary figures and to double-check these figures for inaccuracies, if there were any. In addition, after the issuance of the ERC Orders, the electric cooperatives were allowed to file their respective motions for reconsideration. It cannot be gainsaid, therefore, that SURNECO was not denied due process.

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[24] *Rene Ventenilla Puse v. Ligaya delos Santos-Puse*, G.R. No. 183678, March 5, 2010, citing *Alcala v. Villar*, 461 Phil. 617, 626 (2003).

[25] *Perez v. Philippine Telegraph and Telephone Company*, G.R. No. 152048, April 7, 2009, 584 SCRA 110, 124, citing *Autobus Workers' Union v. NLRC*, 353 Phil. 419, 430 (1998).

Finally, the core of the issues raised is factual in character. It needs only to be reiterated that factual findings of administrative bodies on technical matters within their area of expertise should be accorded not only respect but even finality if they are supported by substantial evidence even if not overwhelming or preponderant,[26] more so if affirmed by the CA. Absent any grave abuse of discretion on the part of ERC, we must sustain its findings. Hence, its assailed Orders, following the rule of non-interference on matters addressed to the sound discretion of government agencies entrusted with the regulation of activities coming their special technical knowledge and training, must be upheld.[27]

WHEREFORE, the petition is *DENIED*. The Decision dated April 17, 2008 and the Resolution dated June 25, 2008 of the Court of Appeals in CA-G.R. SP No. 99781 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Velasco, Jr.,[**] *Peralta, Mendoza,* and *Sereno,*[***] *JJ.*, concur.

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[26] *Republic of the Philippines v. Manila Electric Company, supra* note 20, at 399.

[27] *Philippine National Construction Corporation v. Court of Appeals*, G.R. No. 159417, January 25, 2007, 512 SCRA 684, 698, citing *First Lepanto Ceramics, Inc. v. Court of Appeals*, 323 Phil. 657, 664 (1996).

[**] Additional member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 897 dated September 28, 2010.

[***] Additional member in lieu of Associate Justice Roberto A. Abad per Special Order No. 903 dated September 28, 2010.

EN BANC

[A.M. No. CA-10-50-J. October 5, 2010]
(formerly A.M. OCA IPI No. 09-152-CA-J)

3-D INDUSTRIES, INC. and SMARTNET PHILIPPINES, INC., *complainants, vs.* **JUSTICES VICENTE Q. ROXAS and JUAN Q. ENRIQUEZ, JR.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; HAS THE DUTY TO OVERSEE THE JUDGES AND COURT PERSONNEL AND TAKE THE PROPER ADMINISTRATIVE ACTION AGAINST THEM IF THEY COMMIT ANY VIOLATION OF THE LAWS.— The present complaint in so far as it involves complainant 3-D raises issues not passed upon by this Court in *Guy v. Court of Appeals*. It bears noting that the complaint was indorsed by the Office of the Ombudsman to this Court specifically for a determination of whether respondents acted within their duties, pursuant to *Fuentes v. Office of the Ombudsman-Mindanao* which ruled: ". . . [I]t is the Supreme Court that is tasked to oversee the Judges and Court personnel and take the proper administrative action against them if they commit any violation of the laws of the land."

2. CRIMINAL LAW; VIOLATION OF SECTION 3(E) OF REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); HOW COMMITTED.— There are two ways by which Section 3(e), R.A. No. 3019 may be violated, *viz*: 1) by giving undue injury to any party, including the Government, 2) *by causing any private party any unwarranted benefit, advantage or preference*. These acts must be committed with manifest partiality, evident bad faith, or gross and inexcusable negligence.

3. ID.; ID.; ID.; MANIFEST PARTIALITY, DEFINED; BAD FAITH, DEFINED; GROSS NEGLIGENCE, DEFINED.— Manifest partiality has been defined as "a clear, notorious or plain inclination or predilection to favor one side rather than the other." Bad faith connotes not only bad judgment or

negligence, but also a dishonest purpose, a conscious wrongdoing, or a breach of duty amounting to fraud. Gross negligence is 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 intentionally, with a conscious indifference to consequences as far as other persons are concerned.

4. ID.; ID.; NOT COMMITTED IN CASE AT BAR.— That the assailed Resolutions issued by respondents favored NICI and the Guy family does not necessarily render respondents guilty of violation of Section 3(e) of R.A. No. 3019, absent proven particular acts of manifest, evident bad faith or gross inexcusable negligence, good faith and regularity being generally presumed in the performance of official duties by public officers. That is why administrative complaints against judges must always be examined with a discriminating eye for its consequential effects are, by their nature, highly penal, such that they stand to face the sanction of dismissal and/or disbarment. In order for this administrative offense to prosper, the subject order or actuation of the judge in the performance of his official duties must not only be contrary to existing law and jurisprudence but, more importantly, must be attended by bad faith, fraud, dishonesty or corruption. Since the impleading of additional parties, on motion of any party or *motu proprio* at any stage of the action and/or such times as are just is allowed, the Court finds that respondents' participation in the admission of the supplemental petitions impleading herein complainants as respondents in CA-G.R.SP No. 87104 does not render them administratively liable.

5. LEGAL ETHICS; JUDGES; NOT EVERY ERROR OR MISTAKE A JUDGE COMMITS IN THE PERFORMANCE OF HIS DUTIES RENDERS HIM LIABLE; EXCEPTION.— While respondents may have based the assailed Resolutions on mere allegations, thus disregarding what has been established in jurisprudence that "mere allegation that a corporation is the alter ego of the individual stockholders is insufficient," this does not render them administratively liable because not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice, which is not the case here.

APPEARANCES OF COUNSEL

Antonio R. Bautista & Partners and *Mondragon & Montoya Law Offices* for complainants.

D E C I S I O N

CARPIO MORALES, *J.*:

Referred for appropriate action by the Office of the Ombudsman to this Court's Office of the Court Administrator is the verified May 13, 2005 Complaint[1] with enclosures of 3-D Industries, Inc. (3-D), and Smartnet Philippines, Inc. (Smartnet) represented by Gilbert Guy (Gilbert), against Court of Appeals (CA or appellate court) Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas, for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act[2] (R.A. 3019, as amended) relative to the admission, by the Eighth Division of the CA, of which said Justices were members, of a Supplemental Petition for *Certiorari* and Second Supplemental Petition for *Certiorari* in CA-G.R. SP No. 87014, "*Northern Islands Co., Inc., et al. v. Hon. Artemio S. Tipon, et al.*"

Culled from *Guy v. Court of Appeals*,[3] decided by this Court on December 10, 2007, are the following antecedent facts:

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[1] *Rollo*, p. 1.

[2] Section 3. Corrupt practices of public officers.-In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of the offices or government corporations charged with the grant of licenses or permits or other concessions.

[3] G.R. Nos. 165848, 170185, 170186. 171066 and 176650, December 10, 2007, 539 SCRA 584.

Herein complainant Smartnet's representative Gilbert is the son of the spouses Francisco and Simny Guy. The spouses organized Northern Islands Co., Inc. (NICI) which is engaged in the manufacture, distribution, and sale of various home appliances bearing the "3-D" trademark. The spouses also organized Lincoln Continental Development Corporation, Inc. (Lincoln Continental) as a holding company of 50% of the 20,160 shares of stock of NICI in trust for their three daughters Geraldine, Gladys and Grace-sisters of Gilbert.

Finding that their son Gilbert had been dissipating the assets of Lincoln Continental, the spouses Guy caused the registration of 50% of the 20,160 shares of stock of NICI in the names of their three daughters, thus enabling the latter to assume an active role in the management of NICI.

On March 18, 2004, Lincoln Continental filed a complaint at the Regional Trial Court (RTC) of Manila against NICI and Gilbert's parents-the spouses Guy and three sisters (hereafter the Guy family), for annulment of the transfer of the 50% NICI shares of stock to Gilbert's sisters. The complaint, docketed as Civil Case No. 04-109444, prayed for, among other things, the restoration of the management of NICI to Gilbert, and the issuance of a Temporary Restraining Order (TRO) and a writ of preliminary mandatory injunction to prohibit Gilbert's sisters from exercising any right of ownership over the questioned shares.

Lincoln Continental later filed a Motion to Inhibit the Presiding Judge of Branch 24 of RTC Manila to which its complaint was raffled on the ground of partiality. The Motion was granted and the case was re-raffled to Branch 46 of the same court.

NICI and the Guy family challenged the inhibition of the Presiding Judge of Branch 24 via *Certiorari* and *Mandamus* before the CA in which they prayed for, among other things, the issuance of an order restraining the Presiding Judge of Branch 46 from further hearing Civil Case No. 04-109444.

In the meantime, Branch 46, acting on the prayer of Lincoln Continental, issued on June 15, 2004 a TRO restoring the management of NICI to Gilbert. Branch 46 subsequently issued

on October 13, 2004 writ of preliminary mandatory injunction as prayed for by Lincoln Continental.

On account of the issuance by the Manila RTC Branch 46 of a writ of preliminary mandatory injunction in favor of Lincoln Continental, the CA-Tenth Division, by Resolution of October 20, 2004, denied NICI's and the Guy family's petition for *Certiorari* and *Mandamus*.

NICI and the Guy family thereafter filed a new petition for *Certiorari* with application for TRO/preliminary injunction, docketed as **CA-G.R. SP No. 87104**, praying for the nullification of the above-mentioned RTC Manila Branch 46's TRO dated June 15, 2004 and Writ of Preliminary Mandatory Injunction dated October 13, 2004 and the restoration of the *status quo ante*. This new petition was raffled to the appellate court's Eighth Division.

Acting on NICI and the Guy family's new petition, the CA-Eighth Division issued on October 28, 2004 a TRO enjoining the implementation of the October 13, 2004 Writ of Preliminary Mandatory Injunction issued by the Manila RTC Branch 46.

On November 2, 2004, NICI and the Guy family filed with the CA-Eighth Division an Urgent Omnibus Motion praying for the issuance of a Break-Open Order[4] to implement the appellate court's October 28, 2004 TRO. The motion was granted by Resolution of November 4, 2004 pursuant to which the Guy family entered the NICI premises at No. 3 Mercury Avenue, Libis, Quezon City.

Herein Smartnet, one of the occupants of the NICI premises, filed on December 16, 2004 with the Metropolitan Trial Court (MeTC) of Quezon City a **complaint for forcible entry** against NICI and the Guy family, docketed as Civil Case No. 35-33937.

In the meantime, the CA-Eighth Division directed the issuance of a writ of preliminary injunction prayed for by NICI and the Guy family in their new petition, CA-G.R. SP No. 87104, and a writ was accordingly issued on December 22, 2004.

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[4] *Supra* note 3 at 593.

Gilbert later filed a **complaint for replevin** *on behalf of 3-D*, docketed as Civil Case No. 70220, before the RTC of Pasig City. The complaint was given due course by Branch 71 of the RTC Pasig which issued on January 18, 2005 a writ of replevin in favor of 3-D, prompting the NICI and the Guy family to file on January 20, 2005 before the CA-Eighth Division a *Supplemental Petition* for *Certiorari* with Urgent Motion for a Writ of Preliminary Injunction to Include Supervening Events. The Supplemental Petition[5] impleaded as additional respondents herein complainant 3-D, Judges Celso D. Laviña, Presiding Judge, RTC, Branch 71, Pasig City and Sheriff Cresencio Rabello, Jr., alleging that Gilbert, in an attempt to circumvent the TROs and injunctive writ issued by the CA-Eighth Division, allowed himself to be used by 3-D by filing, on its behalf, a complaint for replevin.

By **Resolution of January 24, 2005**, the appellate court's Eighth Division issued the questioned Resolution admitting the *Supplemental Petition for Certiorari*.

Still later, NICI and the Guy family filed on April 15, 2005, before the CA-Eighth Division a *Second Supplemental Petition for Certiorari* and *Prohibition* with Urgent Motion for the Issuance of an Expanded Writ of Preliminary Injunction,[6] impleading as additional respondent herein complainant Smartnet, among others.

In the *Second Supplemental Petition*, NICI and the Guy family raised, in the main, the allegedly continuing forum shopping of Gilbert by continuing to use Smartnet, *inter alia*, as alter ego and dummy to institute various cases in court to gain control of the properties of NICI.[7]

By **Resolution of April 26, 2005**, the members of the appellate court's Eighth Division, which had segued to the Seventh Division including respondents, admitted the *Second Supplemental Petition*

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[5] *Vide rollo*, pp. 4 and 10.

[6] *Vide id.* at 2 and 9.

[7] *Vide id.* at 11.

for Certiorari and restrained the additionally impleaded respondents including Smartnet from disturbing the December 22, 2004 writ of preliminary injunction[8] issued by the Eighth Division of which respondents were members.

In the present administrative complaint, complainants allege that in issuing the assailed **Resolutions dated January 24, 2005** and **April 26, 2005**, respondents caused undue injury to them by, among other things, giving the petitioners (NICI and the Guy Family) in the new petition for *Certiorari* unwarranted benefits, advantage or preference through manifest partiality, evident bad faith, or gross inexcusable negligence in the discharge of their judicial functions in violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.[9]

Complainants likewise allege that respondents, in issuing the questioned Resolutions, had "maneuvered" the assignment to the Eighth Division of the "supplemental" petitions of NICI and the Guy family, which were, however, completely *different* from the new petition for *Certiorari*, for the purpose of assuring that those "supplemental" petitions would not be raffled or assigned to other possibly unsympathetic divisions of the appellate court.[10]

Furthermore, complainants allege that the conclusory ruling in the questioned Resolutions was a "lame pretext" since the properties involved therein are not in *custodia legis*, and there was no factual basis that 3-D is a mere alter ego or dummy of Gilbert.[11]

Finally, complainants allege that the Divisions in which respondents were sitting had mutated into a "judicial vending machine," regularly dispensing TROs and injunctions at an "impressive maximum" of five days from the filing of the pleadings by the petitioners.[12]

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[8] *Vide id.* at 13.

[9] *Id.* at 3.

[10] *Ibid.*

[11] *Id.* at 4.

[12] *Id.* at 5.

By Resolution of July 28, 2009, the Court required respondent Justice Enriquez to comment on the complaint and to show cause why he should not be suspended, disbarred or otherwise disciplinary sanctioned; and to refer the complaint against Justice Vicente Q. Roxas, who was already out of the service, to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

Respondent Justice Enriquez filed his Comment dated September 16, 2009, emphasizing that the questioned Resolution of April 26, 2007 was upheld by this Court in its Decision in G.R. No. 165849, *Guy v. Courts of Appeals*,[13] hence, complainants' allegation of manifest partiality, evident bad faith, gross negligence, and derogation of established procedure is totally devoid of factual and legal basis. He informs that he was neither the *ponente* of this assailed Resolution nor the Senior Member of the now Seventh Division of the appellate court.

In compliance with this Court's Resolution of October 6, 2009, complainants filed a Reply dated December 4, 2009, laying emphasis on the fact that this Court's decision in *Guy v. Court of Appeals* was completely silent on the issue of whether the CA-Eighth Division could expand the coverage of the Writ of Preliminary Injunction of December 22, 2004 restraining Manila RTC Branch 46 from implementing the Writ of Preliminary Mandatory Injunction which restored the management of NICI to Gilbert.

Complainants add that the appellate court's Eighth Division acted with undue haste in precipitately admitting the two Supplemental Petitions for *Certiorari* on the basis of the bare and unsubstantiated allegation that Gilbert was using herein complainants as his alter egos to wrest control and possession of the assets and properties of NICI.

Meanwhile, the IBP Commission on Bar Discipline endorsed back to the Office of the Bar Confidant on September 23, 2009 the complaint respecting Justice Roxas, in compliance

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[13] *Supra* note 3.

with the September 5, 2006 Resolution of this Court in Bar Matter 1645.[14]

The present complaint in so far as it involves complainant 3-D raises issues not passed upon by this Court in *Guy v. Courts of Appeals.* It bears noting that the complaint was indorsed by the Office of the Ombudsman to this Court specifically for a determination of whether respondents acted within their duties, pursuant to *Fuentes v. Office of the Ombudsman-Mindanao*[15] which ruled:

> . . . [I]t is the Supreme Court that is tasked to oversee the Judges and Court personnel and take the proper administrative action against them if they commit any violation of the laws of the land.

The present complaint thus stemmed from the participation of respondents in the issuance of the two assailed Resolutions dated January 24, 2005 and April 26, 2005, which admitted the Supplemental and Second Supplemental Petitions, respectively, of NICI and the Guy family impleading herein complainants, among others, as additional respondents in CA-G.R. SP No. 87104, thereby including them in the coverage of the injunctive writ issued therein on December 22, 2004 enjoining the implementation of the Manila RTC Branch 46 Order which restored the management of NICI to Gilbert. Recall that complainants charge that by their questioned Resolutions, respondents violated Section 3(e) of R.A. No. 3019 for allegedly giving unwarranted benefits to NICI and the Guy family.

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[14] This resolved to amend the second paragraph of Section 1, Rule 139-B of the Rules of Court by directing the IBP to forward to the Supreme Court all complaints for disbarment, suspension and discipline filed against incumbent Justices of the Court of Appeals, Sandiganbayan, Court of Tax Appeals and judges of lower courts, whether or not they are charged singly or jointly with other respondents, and whether or not the complaint against them arose from the discharge of their official functions. The same procedure is observed with respect to complaints against retired justices and judges.

[15] G.R. No. 124295, October 23, 2001, 368 SCRA 36, 37.

There are two ways by which Section 3(e), R.A. No. 3019 may be violated,[16] *viz*: 1) by giving undue injury to any party, including the Government, 2) *by causing any private party any unwarranted benefit, advantage or preference.*[17] These acts must be committed with manifest partiality, evident bad faith, or gross and inexcusable negligence.

Manifest partiality has been defined as "a clear, notorious or plain inclination or predilection to favor one side rather than the other."[18] Bad faith connotes not only bad judgment or negligence, but also a dishonest purpose, a conscious wrongdoing, or a breach of duty amounting to fraud.[19] Gross negligence is 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 intentionally, with a conscious indifference to consequences as far as other persons are concerned.[20]

That the assailed Resolutions issued by respondents favored NICI and the Guy family does not necessarily render respondents guilty of violation of Section 3(e) of R.A. No. 3019, absent proven particular acts of manifest, evident bad faith or gross inexcusable negligence, good faith and regularity being generally presumed in the performance of official duties by public officers.[21]

That is why administrative complaints against judges must always be examined with a discriminating eye for its consequential

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[16] *Santiago v. Garchitorena*, G.R. No. 109266, December 2, 1993, 228 SCRA 214, 222.

[17] *Velasco v. Sandiganbayan*, 492 Phil 669, 677 (2005).

[18] *Reyes v. Atienza*, G.R. No. 152243, September 23, 2005, 470 SCRA 670, 683, *citing Marcelo v. Sandiganbayan*, G.R. No. 69983, May 14, 1990, 185 SCRA 346.

[19] *Dela Chica v. Sandiganbayan*, 462 Phil 712, 721 (2003).

[20] *Mendoza-Arce v. Office of the Ombudsman*, 430 Phil 101, 115 (2002).

[21] *Re: Subpoena Duces Tecum dated January 11, 2010 of Acting Director Aleu A. Amante, PIAB-C, Office of the Ombudsman*, A.M. No. 10-1-13-SC, March 2, 2010 *citing Dela Chica v. Sandiganbayan*, 462 Phil. 712, 722 (2003).

effects are, by their nature, highly penal, such that they stand to face the sanction of dismissal and/or disbarment.[22] In order for this administrative offense to prosper, the subject order or actuation of the judge in the performance of his official duties must not only be contrary to existing law and jurisprudence but, more importantly, must be attended by bad faith, fraud, dishonesty or corruption.[23]

Since the impleading of additional parties, on motion of any party or *motu proprio* at any stage of the action and/or such times as are just is allowed,[24] the Court finds that respondents' participation in the admission of the supplemental petitions impleading herein complainants as respondents in CA-G.R.SP No. 87104 does not render them administratively liable.

While respondents may have based the assailed Resolutions on mere allegations, thus disregarding what has been established in jurisprudence that "mere allegation that a corporation is the alter ego of the individual stockholders is insufficient,"[25] this does not render them administratively liable because not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice,[26] which is not the case here.

WHEREFORE, the administrative complaint is *DISMISSED*.

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

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[22] *Borromeo-Garcia v. Pagaytan*, 566 SCRA 320.

[23] *Office of the Solicitor General v. Judge De Castro*, A.M. No. RTJ-06-2018, 3 August 2007, 529 SCRA 157, 174.

[24] *Vda. De Manguera v. Risos*, G.R. No. 152643, August 28, 2008, 563 SCRA 499.

[25] *Ramoso v. Court of Appeals*, G.R. No. 117416, December 8, 2000.

[26] *Rallos v. Gako, Jr.*, 328 SCRA 324 (2000); *Calleja v. Santelices*, 328 SCRA 61 (2000).

Brion, J., on official leave.

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

EN BANC

[A.M. No. P-06-2221. October 5, 2010]
(Formerly A.M. No. 06-7-215-MTCC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **RODELIO E. MARCELO and MA. CORAZON D. ESPAÑOLA, MTCC, SAN JOSE DEL MONTE CITY, BULACAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; REQUIRED TO DEPOSIT ALL COLLECTIONS WITH THE LAND BANK OF THE PHILIPPINES WITHIN TWENTY-FOUR HOURS UPON RECEIPT OF COLLECTIONS.— Without doubt, Marcelo deserves to be sanctioned for the grave transgressions he committed while in office. As clerk of court, he was in charge of the court's funds and was responsible for their collection and safekeeping. He was an accountable officer, a position which carries a degree of trust of the highest order, as Judge Capellan aptly noted. Marcelo violated that trust several times over for a period covering more than two years. He made collections for the court's several funds (JDF, Fiduciary Fund, General Fund, Special Allowance for the Judiciary, between March 5, 2002 and December 31, 2004) and never bothered to deposit these collections in the official court depository bank, the Land Bank of the Philippines (*LBP*) — a violation of the rule that all clerks of court are required to deposit all collections with the LBP within twenty-four (24) hours upon receipt of the collections.

2. ID.; ID.; ID.; ID.; ID.; SHOULD NOT KEEP FUNDS IN THEIR CUSTODY.— Marcelo also held on to his collections, thus committing another violation. Clerks of court may not keep funds in their custody. When he could not make the deposit anymore because he was no longer the authorized signatory, he handed – upon the advice of his mother – the collections to a member of his mother's staff who allegedly kept the funds in the vault of the City Prosecutor's Office. This action, if true, however, made matters worse; it was a classic case of "righting a wrong with another wrong." Again, as Judge Capellan noted, Marcelo's mother/counsel is not the court's depository bank.

3. ID.; ID.; ID.; ID.; ID.; MAY BE HELD ACCOUNTABLE FOR FAILURE TO COLLECT MARRIAGE SOLEMNIZATION FEES.— Marcelo likewise failed to collect the marriage solemnization fees for 48 marriages, for which he is also accountable.

4. ID.; ID.; ID.; ID.; ID.; GROSS NEGLECT OF DUTY, DISHONESTY AND GRAVE MISCONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; COMMITTED IN CASE AT BAR; PENALTY.— While it had not been established that Marcelo malversed court funds, it cannot be disputed that his acts and omissions constitute a betrayal of the trust and confidence the Court reposes on a senior officer. In *Re: Report on the Judicial and Financial Audit in RTC, Branch 4, Panabo, Davao del Norte*, we stressed – "The Clerk of Court may not keep funds in his custody as the same should be deposited immediately upon receipt thereof with the City, Municipal or Provincial Treasurer where his court is located should there be no branch of the LBP in the locality. Thus, the failure of Atty. Ginete to remit the funds to the Municipal Treasurer of Panabo, Davao, constitutes gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service. A public servant, like the Clerk of Court, must exhibit at all times the highest sense of honesty and integrity. By Atty. Ginete's failure to properly remit the cash collections that are public funds he transgressed the trust reposed in him as cashier and disbursement officer of the court." Marcelo is no different from Atty. Ginete, who was cited in the above ruling. Like Atty. Ginete, Marcelo is liable for gross neglect of duty, dishonesty and grave misconduct prejudicial

to the best interest of the service. Under Civil Service Rules, these offenses, even if committed by a public servant for the first time, are punishable with dismissal. We, therefore, find the OCA's recommendation that Marcelo be dismissed from the service to be appropriate. We agree with the OCA's observation that Marcelo's dismissal from the service for cause should remain a part of his records.

5. ID.; ID.; ID.; ID.; ID.; RESTITUTION DOES NOT FULLY EXONERATE A CLERK OF COURT WHO FAILED TO DEPOSIT HER COLLECTIONS AT THE TIME SHE WAS SUPPOSED TO; CASE AT BAR.— Española, x x x after being apprised of her shortages amounting to a total of ₱11,847.00 (₱11,647.00 for the JDF and ₱200.00 solemnization of marriage fees), immediately complied with the OCA audit team's directive to deposit the amount covering the shortages. In recognition of her ready compliance, the OCA recommended that she be merely warned that the commission of a similar offense shall be dealt with more severely. The restitution does not, however, fully exonerate Española who still failed to deposit her collections at the time she was supposed to. For this infraction, we hold that the penalty of reprimand is the appropriate penalty.

APPEARANCES OF COUNSEL

Lucita E. Marcelo for Rodelio E. Marcelo.

D E C I S I O N

PER CURIAM:

We resolve in this Decision the administrative matter involving Clerk of Court Rodelio E. Marcelo and Ma. Corazon D. Española, Officer-in-Charge, Office of the Clerk of Court, arising from the financial audit conducted at the Municipal Trial Court in Cities (*MTCC*), San Jose del Monte City, Bulacan.

THE ANTECEDENTS

The financial audit was conducted by the Office of the Court Administrator (*OCA*) on the MTCC books of accounts for the

period May 1991 to April 30, 2005, which covered the terms of several clerks of court.

The report, dated June 28, 2006, of the OCA audit team[1] showed that Marcelo and Española incurred shortages in their collections, pertaining to the court's funds, in the total amount of Seven Hundred Ninety-Two Thousand Two Hundred Thirteen Pesos (₱792,213.00), broken down as follows:

NAME OF FUND	AMOUNT OF SHORTAGE
Clerk of Court General Fund	₱ 75,553.00
Special Allowance for the Judiciary	69,006.00
Judiciary Development Fund	214,929.00
Fiduciary Fund	418,325.00
Marriage Solemnization fees	14,400.00
TOTAL SHORTAGES	₱ 792,213.00

Española, a former clerk of court/officer-in-charge, had a shortage in her collection for the Judiciary Development Fund (*JDF*), for the period January 18, 1996 to November 8, 1996 amounting to ₱11,647.00.[2] The shortage was due to the absence of deposit slips evidencing the remittance of the collection. There was also a shortage in Española's collection of marriage solemnization fees in the amount of ₱200.00. Española was directed to immediately deposit the ₱11,647.00 to the JDF and the ₱200.00 to the marriage solemnization fund.

In a letter, dated June 2, 2005,[3] to Dindo Sevilla (the OCA audit team leader), Española complied with the directive by depositing the amounts covering the shortages.[4]

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[1] *Rollo*, pp. 3-13.

[2] *Id.* at 7.

[3] *Id.* at 40.

[4] *Id.* at 41; acknowledgment receipt.

At the recommendation of the OCA, the Court resolved, on August 7, 2006,[5] to: (1) docket the audit team's report as a regular administrative matter; (2) direct Marcelo to pay the amount of ₱792,213.00, and immediately deposit the payment according to its fund allocations; (3) direct Marcelo and Española to explain, in writing, their failure to deposit the collections on time and why no disciplinary action should be taken against them for the shortages; and (4) refer the matter to Judge Pelagia Dalmacio-Joaquin, MTCC, San Jose del Monte City, Bulacan, for investigation.

Marcelo explained his side through a letter to the MTCC on October 20, 2006.[6] He strongly denied the charge of malversing/pocketing the court's collections. He claimed that he had been frequently on leave of absence starting late 2003 as he has a heart ailment due to stress, anxiety and fear caused by threats to his life and that of his family; sometime in March 2004, he expressed to Judge Joaquin his intention to return to work, but was advised to continue his leave of absence or to report but not as clerk of court, and to perform some other tasks, pending Judge Joaquin's request for the revocation of his designation as acting clerk of court; and he opted to remain on leave instead of doing other tasks.

Marcelo claimed that had Judge Joaquin allowed him to return to work for at least a week, he could have done his work and deposited the court's collections. Marcelo admitted that he entrusted the undeposited court collections to Bernadette Alconiza, supervising stenographer and his mother's secretary, who kept the cash in the vault of the City Prosecutor's Office. The cash were in several bundles, each bundle marked with the amount it contained. While he admitted that he had been remiss in the performance of his duties as clerk of court, he blamed his poor health for his shortcomings.

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[5] *Id.* at 62-63.

[6] *Id.* at 106-110.

Judge Joaquin's investigation was cut short as she inhibited herself from the case[7] upon the motion for inhibition filed by Marcelo's mother and counsel, Atty. Lucita E. Marcelo (who claimed she had retired as City Prosecutor of San Jose del Monte City on April 18, 2006).[8]

In a Resolution dated February 28, 2007, the Court referred the case to Judge Mario B. Capellan of the MTCC, Branch 1, Malolos City, Bulacan, whose Report and Recommendation, submitted on October 9, 2007,[9] provides:

> The salient features of the said financial audit report revealed the following shortages:
>
> | | |
> |---|---|
> | COC General Fund . . . . . | ₱ 75,553.00 |
> | Special Allowance for the Judiciary (SAJ) | 69,006.00 |
> | Judiciary Development Fund (JDF) | 214,923.00 |
> | Fiduciary Fund (FF) | 418,325.00 |
> | Marriage Solemnization Fees | 14,400.00 |
> | | ₱792,213.00 |
>
> These shortages were incurred greatly in part, during the terms of office of Rodelio E. Marcelo.
>
> x x x x x x x x x
>
> Respondent Marcelo, through counsel, admitted that the collections for the different funds of the MTCC, San Jose Del Monte, Bulacan during his incumbency as OIC of the said court were not deposited with the Land Bank, Sta. Maria, Bulacan branch; that when he was about to make the said deposit, he was informed of the change in the authorized signatories. Following his mother/counsel's advi[c]e, the latter being then still in active government service (City Prosecutor's Office), respondent Marcelo brought the money to her, which in turn was given to a certain Bernadette Alconiza for safekeeping in the office's vault. Thereafter, all the withdrawals of deposits made during Marcelo's incumbency as OIC were effected through respondent's mother/counsel.
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[7] *Id.* at 180-182.

[8] Motion for Inhibition, p. 1, par. 1; *id.* at 104.

[9] *Id.* at 265-271.

Respondent Marcelo's shortages were incurred during his incumbency pertaining to the five (5) accounts of the said court, namely:

I. Judiciary Development Fund (JDF)
₱214,929.00 (period of collection – August 6, 2002 to December 31, 2004)

II. Fiduciary Fund (FF)
₱418,325.00 (period of collection – March 5, 2002 to December 31, 2004)

III. General Fund (GF)
₱75,553.00 (period of collection – August 6, 2002 to November 10, 2002)

IV. Special Allowance for the Judiciary (SAJ)
₱69,006.00 (period of collection – November 11, 2002 to December 3, 2004)

V. Marriage Solemnization Fee[s]
₱14,400.00 (period [of collection] – August 13, 2002 to November 23, 2004 or a total of 48 uncollected marriage solemnization fees).

The shortages for accounts, numbers I to IV, were incurred in the absence of the requisite deposit slips. For Account No. V, the total of ₱14,400.00 represents uncollected fees for the forty-eight (48) marriages solemnized during the said period. Respondent Marcelo's total unexplained accountabilities aggregate to ₱792,213.00.

The explanation advanced by respondent Marcelo is simple — that he failed to deposit the collections with the proper depository bank; that around two (2) years, his collections had accumulated and when he decided to make the deposits, there was already a change in the signatories authorized to make such deposits. What puzzles the mind of the court is — why did it take him that long to make the deposits? Admittedly, he kept the money, which he later on turned-over to his mother (his counsel).

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In the case at bar[,] respondent Marcelo having been on AWOL, was already dropped from the rolls effective June 1,

> 2005. His position was already declared vacant (SC Resolution in case No. AM-06-4-135 dated May 29, 2006).
>
> Be that as it may, respondent Marcelo's severance from the government service should not be as simple as that. Although respondent's declaration of AWOL and eventual severance from the office is in effect a dismissal, however, his ouster merits a more severe penalty for a grave offense of dishonesty. There should be a clear categorical and concise pronouncement of his guilt meriting the aforesaid extreme penalty. Such pronouncement will definitely deter similarly minded accountable officers from following respondent's footsteps. The gross dishonesty, if not per se malversation of public funds, deserves not only severance from service not only from the judiciary but the entire government service.

Judge Capellan recommended Marcelo's dismissal, the cancellation of his eligibilities, the forfeiture of all his benefits, perpetual disqualification from holding any public office, and the payment or restitution of the total amount of ₱792,213.00. He also recommended that Marcelo's case be indorsed to the Office of the Ombudsman for proper action.

In a Resolution dated November 26, 2007,[10] the Court referred Judge Capellan's report to the OCA for evaluation.

THE OCA REPORT

In a memorandum submitted on October 9, 2008,[11] the OCA advised the Court of its concurrence with the findings of facts, conclusions of law and recommendations of Judge Capellan. Like Judge Capellan, it found the evidence sufficient to hold Marcelo liable for the irregularities he committed during his term as clerk of court of the MTCC, San Jose del Monte City, Bulacan. Accordingly, it recommended that: (1) Marcelo be found guilty of grave misconduct, dishonesty and gross neglect of duty, and be dismissed from the service; (2) Marcelo's retirement and/or separation benefits be forfeited, except accrued

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[10] *Id.* at 272.

[11] *Id.* at 275-287.

leave credits, and that he be disqualified from re-employment in the government; (3) Marcelo be directed to pay ₱792,213.00; (4) the OCA be directed to process Marcelo's terminal leave pay, dispensing with the usual documentary requirements, and to apply the proceeds to the shortages; (5) the matter be referred to the Office of the Ombudsman for proper action; and (6) Española be warned that the commission of any similar offense shall be dealt with more severely.

THE COURT'S RULING

Without doubt, Marcelo deserves to be sanctioned for the grave transgressions he committed while in office. As clerk of court, he was in charge of the court's funds and was responsible for their collection and safekeeping. He was an accountable officer, a position which carries a degree of trust of the highest order,[12] as Judge Capellan aptly noted. Marcelo violated that trust several times over for a period covering more than two years. He made collections for the court's several funds (JDF, Fiduciary Fund, General Fund, Special Allowance for the Judiciary, between March 5, 2002 and December 31, 2004) and never bothered to deposit these collections in the official court depository bank, the Land Bank of the Philippines (*LBP*) — a violation of the rule that all clerks of court are required to deposit all collections with the LBP within twenty-four (24) hours upon receipt of the collections.[13]

Marcelo also held on to his collections, thus committing another violation. Clerks of court may not keep funds in their custody.[14] When he could not make the deposit anymore because he was no longer the authorized signatory, he handed — upon the advice of his mother — the collections to a member of his mother's staff who allegedly kept the funds in the vault of the City Prosecutor's Office. This action, if true, however, made matters worse; it was a classic case of "righting a wrong with another

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[12] *Judge Fojas v. Rollan*, 428 Phil. 22 (2002).

[13] SC Administrative Circular No. 50-95.

[14] *Alintana de Pacete v. Judge Garillo*, 456 Phil. 666 (2003).

wrong." Again, as Judge Capellan noted, Marcelo's mother/ counsel is not the court's depository bank. Oddly, Marcelo likewise failed to collect the marriage solemnization fees for 48 marriages, for which he is also accountable. His accountability totaled ₱792,213.00.

Marcelo tried to explain away his failure to deposit his collections with the claim that he had a heart condition and had threats to his life and to those of the members of his family.[15] Judge Capellan, however, correctly observed that "[N]o amount of explanation can hide the fact that respondent Marcelo for so many years had at his disposal the huge amount of money which if deposited in the bank could have redounded to the benefit of the government. Malversation of these funds was not therefore remote. It cannot be discounted that respondent benefited from it."[16] The OCA audit team had the same impression. Its report disclosed that "[R]ecords show that Mr. Marcelo was malversing/ pocketing the collections of the court when collections in the Fiduciary Fund x x x amounting to ₱418,325.00 were not deposited by him. It is a willful and a deliberate act on Mr. Marcelo to defraud the court."[17]

While it had not been established that Marcelo malversed court funds, it cannot be disputed that his acts and omissions constitute a betrayal of the trust and confidence the Court reposes on a senior officer. In *Re: Report on the Judicial and Financial Audit in RTC, Branch 4, Panabo, Davao del Norte*,[18] we stressed —

> The Clerk of Court may not keep funds in his custody as the same should be deposited immediately upon receipt thereof with the City, Municipal or Provincial Treasurer where his court is located should there be no branch of the LBP in the locality. Thus, the failure of Atty. Ginete to remit the funds to the Municipal Treasurer of Panabo,

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[15] *Supra* note 6.

[16] *Supra* note 9.

[17] *Supra* note 1, H. Summary, par. 2.

[18] A.M. No. 95-4-143-RTC, March 13, 1998, 287 SCRA 510.

Davao, constitutes gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service.

A public servant, like the Clerk of Court, must exhibit at all times the highest sense of honesty and integrity. By Atty. Ginete's failure to properly remit the cash collections that are public funds he transgressed the trust reposed in him as cashier and disbursement officer of the court.

Marcelo is no different from Atty. Ginete, who was cited in the above ruling. Like Atty. Ginete, Marcelo is liable for gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service. Under Civil Service Rules, these offenses, even if committed by a public servant for the first time, are punishable with dismissal.[19] We, therefore, find the OCA's recommendation that Marcelo be dismissed from the service to be appropriate. We agree with the OCA's observation that Marcelo's dismissal from the service for cause should remain a part of his records.

Española, on the other hand, after being apprised of her shortages amounting to a total of ₱11,847.00 (₱11,647.00 for the JDF and ₱200.00 solemnization of marriage fees), immediately complied with the OCA audit team's directive to deposit the amount covering the shortages. In recognition of her ready compliance, the OCA recommended that she be merely warned that the commission of a similar offense shall be dealt with more severely. The restitution does not, however, fully exonerate Española who still failed to deposit her collections at the time

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[19] Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service provides:

> Section 52. Classification of Offenses. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> A. The following are grave offenses with their corresponding penalties:
>
> 1. Dishonesty – 1st Offense – Dismissal
> 2. Gross Neglect of Duty – 1st Offense – Dismissal
> 3. Grave Misconduct – 1st Offense - Dismissal

she was supposed to. For this infraction, we hold that the penalty of reprimand is the appropriate penalty.

WHEREFORE, premises considered, judgment is hereby rendered as follows:

(1) Respondent **Rodelio E. Marcelo**, former Clerk of Court/ Officer-in-Charge, Municipal Trial Court in Cities, San Jose del Monte City, Bulacan, is found *GUILTY* of Grave Misconduct, Dishonesty and Gross Neglect of Duty; and is hereby ordered *DISMISSED* from the service.

(2) Marcelo's retirement and/or separation benefits are *FORFEITED* except for accrued leave credits, and he is disqualified from re-employment in the government service.

(3) Marcelo is directed to pay ₱792,213.00, representing the shortages in public funds he incurred during his accountable period.

(4) The OCA is directed to process Marcelo's terminal leave pay, dispensing with the usual documentary requirements, and to apply the proceeds to the shortages.

(5) A copy of this Decision is hereby referred to the Office of the Ombudsman for appropriate criminal action, if warranted.

(6) Respondent **Ma. Corazon D. Española**, former Officer-in-Charge of the same court, is *REPRIMANDED* and warned that the commission of a similar offense shall be dealt with more severely.

Let a copy of this Decision be furnished the Office of the Ombudsman for whatever action it may deem appropriate on the possible criminal aspect of this matter.

SO ORDERED.

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

Velasco, Jr. and *Perez, JJ.*, no part.

Carpio, J., on wellness leave.

Abad, J., on official trip.

EN BANC

[G.R. No. 175573. October 5, 2010]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **JOEL S. SAMANIEGO,**[1] *respondent.*

SYLLABUS

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; RULES OF PROCEDURE; FINALITY AND EXECUTION OF DECISION UNDER SECTION 7, RULE III THEREOF.— Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003, provides: "SEC. 7. *Finality and execution of decision.* — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the motion for reconsideration. **An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the**

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[1] The Former Seventh Division of the Court of Appeals was impleaded as a respondent but the Court excluded it pursuant to Section 4, Rule 45 of the Rules of Court.

respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against such officer."

2. ID.; ID.; ID.; ID.; THE OMBUDSMAN'S DECISION IMPOSING THE PENALTY OF SUSPENSION FOR ONE YEAR IS IMMEDIATELY EXECUTORY PENDING APPEAL.— The Ombudsman's decision imposing the penalty of suspension for one year is *immediately executory pending appeal*. It cannot be stayed by the mere filing of an appeal to the CA. This rule is similar to that provided under Section 47 of the Uniform Rules on Administrative Cases in the Civil Service. In the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of the DPWH*, we held: "The Rules of Procedure of the Office of the Ombudsman are clearly procedural and no vested right of the petitioner is violated as he is considered preventively suspended while his case is on appeal. Moreover, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. Besides, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office." Following the ruling in the above cited case, this Court, in *Buencamino v. Court of Appeals*, upheld the resolution of the CA denying Buencamino's application for preliminary injunction against the immediate implementation of the suspension order against him. The Court stated therein that the CA did not commit grave abuse of discretion in denying petitioner's application for injunctive relief because Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was amended by Administrative Order No. 17 dated September 15, 2003.

3. REMEDIAL LAW; RULES OF COURT; MAY APPLY TO CASES IN THE OFFICE OF THE OMBUDSMAN

SUPPLETORILY ONLY WHEN THE PROCEDURAL MATTER IS NOT GOVERNED BY ANY SPECIFIC PROVISION IN THE RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN.— [T]he Rules of Court may apply to cases in the Office of the Ombudsman suppletorily only when the procedural matter is not governed by any specific provision in the Rules of Procedure of the Office of the Ombudsman. Here, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended, is categorical, an appeal shall not stop the decision from being executory.

4. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; RULE-MAKING POWERS; MAY BE INFRINGED BY THE ISSUANCE OF A PRELIMINARY INJUNCTION THAT WILL STAY THE PENALTY IMPOSED BY THE OMBUDSMAN IN AN ADMINISTRATIVE CASE.— Section 13 (8), Article XI of the Constitution authorizes the Office of the Ombudsman to promulgate its own rules of procedure. In this connection, Sections 18 and 27 of the Ombudsman Act of 1989 also provide that the Office of the Ombudsman has the power to "promulgate its rules of procedure for the effective exercise or performance of its powers, functions and duties" and to amend or modify its rules as the interest of justice may require. For the CA to issue a preliminary injunction that will stay the penalty imposed by the Ombudsman in an administrative case would be to encroach on the rule-making powers of the Office of the Ombudsman under the Constitution and RA 6770 as the injunctive writ will render nugatory the provisions of Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman.

5. REMEDIAL LAW; RULES OF COURT; THE PROVISIONS THEREOF CANNOT PREVAIL OVER A SPECIAL RULE.— Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman supersedes the discretion given to the CA in Section 12, Rule 43 of the Rules of Court when a decision of the Ombudsman in an administrative case is appealed to the CA. The provision in the Rules of Procedure of the Office of the Ombudsman that a decision is immediately executory is a special rule that prevails over the provisions of the Rules of Court. *Specialis derogat generali.* When two rules apply to a particular case, that which was specially designed for the said case must prevail over the other.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (Ombudsman) for petitioner.
Efren L. Dizon for respondent.

R E S O L U T I O N

CORONA, *C.J.*:

This is a resolution of the second motion for partial reconsideration filed by petitioner Office of the Ombudsman to our decision dated September 11, 2008,[2] particularly our pronouncement with respect to the stay of the decision of the Ombudsman during the pendency of an appeal:

> Following *Office of the Ombudsman v. Laja*, we hold that the mere filing by respondent of an appeal sufficed to stay the execution of the joint decision against him. Respondent's prayer for the issuance of a writ of a preliminary injunction (for purposes of staying the execution of the decision against him) was therefore a superfluity. The execution of petitioner's joint decision against respondent should be stayed during the pendency of CA-G.R. SP No. 89999.

We reconsider.

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman,[3] as amended by Administrative Order No. 17 dated September 15, 2003, provides:

> SEC. 7. *Finality and execution of decision.* — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days

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[2] Denied with finality in a resolution dated November 11, 2008. *Rollo*, p. 401.

[3] Administrative Order No. 7, dated April 10, 1990.

from receipt of the written Notice of the Decision or Order denying the motion for reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against such officer. (emphasis supplied)

The Ombudsman's decision imposing the penalty of suspension for one year is *immediately executory pending appeal*.[4] It cannot be stayed by the mere filing of an appeal to the CA. This rule is similar to that provided under Section 47 of the Uniform Rules on Administrative Cases in the Civil Service.

In the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of the DPWH*,[5] we held:

The Rules of Procedure of the Office of the Ombudsman are clearly procedural and no vested right of the petitioner is violated as he is considered preventively suspended while his case is on appeal. Moreover, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. Besides, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office.

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[4] *Buencamino v. CA*, G.R. No. 175895, 12 April 2007, 520 SCRA 797.

[5] G.R. No. 150274, 4 August 2006, 497 SCRA 626, 636-637.

Following the ruling in the above cited case, this Court, in *Buencamino v. Court of Appeals*,[6] upheld the resolution of the CA denying Buencamino's application for preliminary injunction against the immediate implementation of the suspension order against him. The Court stated therein that the CA did not commit grave abuse of discretion in denying petitioner's application for injunctive relief because Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was amended by Administrative Order No. 17 dated September 15, 2003.

Respondent cannot successfully rely on Section 12, Rule 43 of the Rules of Court which provides:

SEC. 12. *Effect of appeal* — The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

In the first place, the Rules of Court may apply to cases in the Office of the Ombudsman suppletorily only when the procedural matter is not governed by any specific provision in the Rules of Procedure of the Office of the Ombudsman.[7] Here, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended, is categorical, an appeal shall not stop the decision from being executory.

Moreover, Section 13 (8), Article XI of the Constitution authorizes the Office of the Ombudsman to promulgate its own rules of procedure. In this connection, Sections 18 and 27 of the Ombudsman Act of 1989[8] also provide that the Office of the Ombudsman has the power to "promulgate its rules of procedure for the effective exercise or performance of its powers, functions and duties" and to amend or modify its rules as the interest of justice may require. For the CA to issue a preliminary injunction that will stay the penalty imposed by the Ombudsman

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[6] *Supra* note 3.

[7] *See* Section 3, Rule V, Rules of Procedure of the Office of the Ombudsman.

[8] RA 6770.

in an administrative case would be to encroach on the rule-making powers of the Office of the Ombudsman under the Constitution and RA 6770 as the injunctive writ will render nugatory the provisions of Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman.

Clearly, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman supersedes the discretion given to the CA in Section 12,[9] Rule 43 of the Rules of Court when a decision of the Ombudsman in an administrative case is appealed to the CA. The provision in the Rules of Procedure of the Office of the Ombudsman that a decision is immediately executory is a special rule that prevails over the provisions of the Rules of Court. *Specialis derogat generali*. When two rules apply to a particular case, that which was specially designed for the said case must prevail over the other.[10]

WHEREFORE, the second motion for partial reconsideration is hereby *GRANTED*. Our decision dated September 11, 2008 is *MODIFIED* insofar as it declared that the imposition of the penalty is stayed by the filing and pendency of CA-G.R. SP No. 89999. The decision of the Ombudsman is immediately executory pending appeal and may not be stayed by the filing of the appeal or the issuance of an injunctive writ.

SO ORDERED.

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

Carpio, J., on official leave.

Abad, J., on official business.

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[9] SEC. 12. *Effect of appeal*. — The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed **unless the Court of Appeals shall direct otherwise upon such terms as it may deem just**. (emphasis supplied)

[10] *Supra* note 4.

EN BANC

[G.R. No. 178552. October 5, 2010]

SOUTHERN HEMISPHERE ENGAGEMENT NETWORK, INC., on behalf of the South-South Network (SSN) for Non-State Armed Group Engagement, and ATTY. SOLIMAN M. SANTOS, JR., *petitioners, vs.* **ANTI-TERRORISM COUNCIL, THE EXECUTIVE SECRETARY, THE SECRETARY OF JUSTICE, THE SECRETARY OF FOREIGN AFFAIRS, THE SECRETARY OF NATIONAL DEFENSE, THE SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT, THE SECRETARY OF FINANCE, THE NATIONAL SECURITY ADVISER, THE CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES, AND THE CHIEF OF THE PHILIPPINE NATIONAL POLICE,** *respondents.*

[G.R. No. 178554. October 5, 2010]

KILUSANG MAYO UNO (KMU), represented by its Chairperson Elmer Labog, NATIONAL FEDERATION OF LABOR UNIONS-KILUSANG MAYO UNO (NAFLU-KMU), represented by its National President Joselito V. Ustarez and Secretary General Antonio C. Pascual, and CENTER FOR TRADE UNION AND HUMAN RIGHTS, represented by its Executive Director Daisy Arago, *petitioners, vs.* **HON. EDUARDO ERMITA, in his capacity as Executive Secretary, NORBERTO GONZALES, in his capacity as Acting Secretary of National Defense, HON. RAUL GONZALES, in his capacity as Secretary of Justice, HON. RONALDO PUNO, in his capacity as Secretary of the Interior and Local Government, GEN. HERMOGENES ESPERON, in his capacity as AFP Chief of Staff, and DIRECTOR GENERAL OSCAR CALDERON, in his capacity as PNP Chief of Staff,** *respondents.*

[G.R. No. 178581. October 5, 2010]

BAGONG ALYANSANG MAKABAYAN (BAYAN), GENERAL ALLIANCE BINDING WOMEN FOR REFORMS, INTEGRITY, EQUALITY, LEADERSHIP AND ACTION (GABRIELA), KILUSANG MAGBUBUKID NG PILIPINAS (KMP), MOVEMENT OF CONCERNED CITIZENS FOR CIVIL LIBERTIES (MCCCL), CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE), KALIPUNAN NG DAMAYANG MAHIHIRAP (KADAMAY), SOLIDARITY OF CAVITE WORKERS, LEAGUE OF FILIPINO STUDENTS (LFS), ANAKBAYAN, PAMBANSANG LAKAS NG KILUSANG MAMAMALAKAYA (PAMALAKAYA), ALLIANCE OF CONCERNED TEACHERS (ACT), MIGRANTE, HEALTH ALLIANCE FOR DEMOCRACY (HEAD), AGHAM, TEOFISTO GUINGONA, JR., DR. BIENVENIDO LUMBERA, RENATO CONSTANTINO, JR., SISTER MARY JOHN MANANSAN OSB, DEAN CONSUELO PAZ, ATTY. JOSEFINA LICHAUCO, COL. GERRY CUNANAN (ret.), CARLITOS SIGUION-REYNA, DR. CAROLINA PAGADUAN-ARAULLO, RENATO REYES, DANILO RAMOS, EMERENCIANA DE LESUS, RITA BAUA, REY CLARO CASAMBRE, *petitioners, vs.* **GLORIA MACAPAGAL-ARROYO, in her capacity as President and Commander-in-Chief, EXECUTIVE SECRETARY EDUARDO ERMITA, DEPARTMENT OF JUSTICE SECRETARY RAUL GONZALES, DEPARTMENT OF FOREIGN AFFAIRS SECRETARY ALBERTO ROMULO, DEPARTMENT OF NATIONAL DEFENSE ACTING SECRETARY NORBERTO GONZALES, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT SECRETARY RONALDO PUNO, DEPARTMENT OF FINANCE SECRETARY MARGARITO TEVES, NATIONAL SECURITY ADVISER NORBERTO GONZALES, THE NATIONAL**

INTELLIGENCE COORDINATING AGENCY (NICA), THE NATIONAL BUREAU OF INVESTIGATION (NBI), THE BUREAU OF IMMIGRATION, THE OFFICE OF CIVIL DEFENSE, THE INTELLIGENCE SERVICE OF THE ARMED FORCES OF THE PHILIPPINES (ISAFP), THE ANTI-MONEY LAUNDERING COUNCIL (AMLC), THE PHILIPPINE CENTER ON TRANSNATIONAL CRIME, THE CHIEF OF THE PHILIPPINE NATIONAL POLICE GEN. OSCAR CALDERON, THE PNP, including its intelligence and investigative elements, AFP CHIEF GEN. HERMOGENES ESPERON, *respondents.*

[G.R. No. 178890. October 5, 2010]

KARAPATAN, ALLIANCE FOR THE ADVANCEMENT OF PEOPLE'S RIGHTS, represented herein by Dr. Edelina de la Paz, and representing the following organizations: HUSTISYA, represented by Evangeline Hernandez and also on her own behalf; DESAPARECIDOS, represented by Mary Guy Portajada and also on her own behalf, SAMAHAN NG MGA EX-DETAINEES LABAN SA DETENSYON AT PARA SA AMNESTIYA (SELDA), represented by Donato Continente and also on his own behalf, ECUMENICAL MOVEMENT FOR JUSTICE AND PEACE (EMJP), represented by Bishop Elmer M. Bolocon, UCCP, and PROMOTION OF CHURCH PEOPLE'S RESPONSE, represented by Fr. Gilbert Sabado, OCARM, *petitioners, vs.* **GLORIA MACAPAGAL-ARROYO, in her capacity as President and Commander-in-Chief, EXECUTIVE SECRETARTY EDUARDO ERMITA, DEPARTMENT OF JUSTICE SECRETARY RAUL GONZALEZ, DEPARTMENT OF FOREIGN AFFAIRS SECRETARY ALBERTO ROMULO, DEPARTMENT OF NATIONAL DEFENSE ACTING SECRETARY NORBERTO GONZALES, DEPARTMENT OF INTERIOR AND LOCAL**

GOVERNMENT SECRETARY RONALDO PUNO, DEPARTMENT OF FINANCE SECRETARY MARGARITO TEVES, NATIONAL SECURITY ADVISER NORBERTO GONZALES, THE NATIONAL INTELLIGENCE COORDINATING AGENCY (NICA), THE NATIONAL BUREAU OF INVESTIGATION (NBI), THE BUREAU OF IMMIGRATION, THE OFFICE OF CIVIL DEFENSE, THE INTELLIGENCE SERVICE OF THE ARMED FORCES OF THE PHILIPPINES (ISAFP), THE ANTI-MONEY LAUNDERING COUNCIL (AMLC), THE PHILIPPINE CENTER ON TRANSNATIONAL CRIME, THE CHIEF OF THE PHILIPPINE NATIONAL POLICE GEN. OSCAR CALDERON, THE PNP, including its intelligence and investigative elements, AFP CHIEF GEN. HERMOGENES ESPERON, *respondents.*

[G.R. No. 179157. October 5, 2010]

THE INTEGRATED BAR OF THE PHILIPPINES (IBP), represented by Atty. Feliciano M. Bautista, COUNSELS FOR THE DEFENSE OF LIBERTY (CODAL), SEN. MA. ANA CONSUELO A.S. MADRIGAL and FORMER SENATORS SERGIO OSMEÑA III and WIGBERTO E. TAÑADA, petitioners, vs. **EXECUTIVE SECRETARY EDUARDO ERMITA AND THE MEMBERS OF THE ANTI-TERRORISM COUNCIL (ATC),** respondents.

[G.R. No. 179461. October 5, 2010]

BAGONG ALYANSANG MAKABAYAN-SOUTHERN TAGALOG (BAYAN-ST), GABRIELA-ST, KATIPUNAN NG MGA SAMAHANG MAGSASAKA-TIMOG KATAGALUGAN (KASAMA-TK), MOVEMENT OF CONCERNED CITIZENS FOR CIVIL LIBERTIES (MCCCL), PEOPLES MARTYRS, ANAKBAYAN-ST, PAMALAKAYA-ST, CONFEDERATION FOR UNITY,

RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE-ST), PAGKAKAISA'T UGNAYAN NG MGA MAGBUBUKID SA LAGUNA (PUMALAG), SAMAHAN NG MGA MAMAMAYAN SA TABING RILES (SMTR-ST), LEAGUE OF FILIPINO STUDENTS (LFS), BAYAN MUNA-ST, KONGRESO NG MGA MAGBUBUKID PARA SA REPORMANG AGRARYO KOMPRA, BIGKIS AT LAKAS NG MGA KATUTUBO SA TIMOG KATAGALUGAN (BALATIK), SAMAHAN AT UGNAYAN NG MGA MAGSASAKANG KABABAIHAN SA TIMOG KATAGALUGAN (SUMAMAKA-TK), STARTER, LOSÑOS RURAL POOR ORGANIZATION FOR PROGRESS & EQUALITY, CHRISTIAN NIÑO LAJARA, TEODORO REYES, FRANCESCA B. TOLENTINO, JANNETTE E. BARRIENTOS, OSCAR T. LAPIDA, JR., DELFIN DE CLARO, SALLY P. ASTRERA, ARNEL SEGUNE BELTRAN, *petitioners*, *vs.* **GLORIA MACAPAGAL-ARROYO, in her capacity as President and Commander-in-Chief, EXECUTIVE SECRETARY EDUARDO ERMITA, DEPARTMENT OF JUSTICE SECRETARY RAUL GONZALEZ, DEPARTMENT OF FOREIGN AFFAIRS SECRETARY ALBERTO ROMULO, DEPARTMENT OF NATIONAL DEFENSE ACTING SECRETARY NORBERTO GONZALES, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT SECRETARY RONALDO PUNO, DEPARTMENT OF FINANCE SECRETARY MARGARITO TEVES, NATIONAL SECURITY ADVISER NORBERTO GONZALES, THE NATIONAL INTELLIGENCE COORDINATING AGENCY (NICA), THE NATIONAL BUREAU OF INVESTIGATION (NBI), THE BUREAU OF IMMIGRATION, THE OFFICE OF CIVIL DEFENSE, THE INTELLIGENCE SERVICE OF THE ARMED FORCES OF THE PHILIPPINES (ISAFP), THE ANTI-MONEY LAUNDERING COUNCIL (AMLC), THE PHILIPPINE**

CENTER ON TRANSNATIONAL CRIME, THE CHIEF OF THE PHILIPPINE NATIONAL POLICE GEN. OSCAR CALDERON, THE PNP, including its intelligence and investigative elements, AFP CHIEF GEN. HERMOGENES ESPERON, *respondents*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DOES NOT LIE AGAINST RESPONDENTS WHO DO NOT EXERCISE JUDICIAL OR QUASI-JUDICIAL FUNCTIONS.— *[C]ertiorari* does not lie against respondents who do not exercise judicial or quasi-judicial functions. Section 1, Rule 65 of the Rules of Court is clear: "Section 1. *Petition for certiorari*.—When any tribunal, board or officer **exercising judicial or quasi-judicial functions** has **acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction x x x."**

2. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; REQUISITES.— In constitutional litigations, the power of judicial review is limited by four exacting requisites, *viz*: (a) there must be an actual case or controversy; (b) petitioners must possess *locus standi*; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the *lis mota* of the case.

3. ID.; ID.; ID.; *LOCUS STANDI* OR LEGAL STANDING; DEFINED.— *Locus standi* or legal standing requires *a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.*

4. ID.; ID.; ID.; ID.; RULE.— *Anak Mindanao Party-List Group v. The Executive Secretary* summarized the rule on *locus standi*, thus: "*Locus standi* or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question on standing is whether a party alleges such personal

stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. [A] party who assails the constitutionality of a statute must have **a direct and personal interest**. It must show not only that the law or any governmental act is invalid, but also that **it sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement**, and not merely that it suffers thereby in some indefinite way. It must show that it has been or is about to be denied some right or privilege to which it is lawfully entitled or that it is about to be subjected to some burdens or penalties by reason of the statute or act complained of. For a concerned party to be allowed to raise a constitutional question, it must show that (1) it has **personally suffered some actual or threatened injury** as a result of the allegedly illegal conduct of the government, (2) the injury is fairly traceable to the challenged action, and (3) the injury is likely to be redressed by a favorable action."

5. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; REQUISITES.— The Court cannot take judicial notice of the alleged "tagging" of petitioners. "Generally speaking, matters of judicial notice have three material requisites: (1) **the matter must be one of common and general knowledge**; (2) **it must be well and authoritatively settled and not doubtful or uncertain**; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is **either**: (1) **generally known** within the territorial jurisdiction of the trial court; **or** (2) **capable of accurate and ready determination** by resorting to sources whose accuracy cannot reasonably be questionable. Things of "common knowledge," of which courts take judicial matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias,

dictionaries or other publications, are judicially noticed, provided, they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. As the common knowledge of man ranges far and wide, a wide variety of particular facts have been judicially noticed as being matters of common knowledge. But **a court cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the court has no constructive knowledge**." No ground was properly established by petitioners for the taking of judicial notice. Petitioners' apprehension is insufficient to substantiate their plea. That no specific charge or proscription under RA 9372 has been filed against them, three years after its effectivity, belies any claim of imminence of their *perceived* threat emanating from the so-called tagging. The same is true with petitioners **KMU, NAFLU** and **CTUHR** in G.R. No. 178554, who merely harp as well on their supposed "link" to the CPP and NPA. They fail to particularize how the implementation of specific provisions of RA 9372 would result in direct injury to their organization and members.

6. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; *LOCUS STANDI* OR LEGAL STANDING; CANNOT BE CLAIMED BY MERE INVOCATION OF THE DUTY TO PRESERVE THE RULE OF LAW; CASE AT BAR.— The mere invocation of the duty to preserve the rule of law does not, however, suffice to clothe the IBP or any of its members with standing. The IBP failed to sufficiently demonstrate how its mandate under the assailed statute revolts against its constitutional rights and duties. Moreover, both the IBP and CODAL have not pointed to even a single arrest or detention effected under RA 9372.

7. ID.; ID.; ID.; ID.; CANNOT BE ASSERTED BY THOSE WHO CLAIM TO HAVE BEEN THE SUBJECT OF POLITICAL SURVEILLANCE; CASE AT BAR.—Former Senator Ma. Ana Consuelo Madrigal, who claims to have been the subject of "political surveillance," also lacks *locus standi*. Prescinding from the veracity, let alone legal basis, of the claim of "political surveillance," the Court finds that she has not shown even the slightest threat of being charged under RA 9372. Similarly lacking in *locus standi* are **former Senator Wigberto Tañada** and **Senator Sergio Osmeña III**, who cite their being

respectively a human rights advocate and an oppositor to the passage of RA 9372. Outside these gratuitous statements, no concrete injury to them has been pinpointed.

8. ID.; ID.; ID.; ID.; CANNOT BE CLAIMED ON THE BASIS OF A MERE INVOCATION OF HUMAN RIGHTS ADVOCACY; CASE AT BAR.— Petitioners **Southern Hemisphere Engagement Network** and **Atty. Soliman Santos Jr.** in **G.R. No. 178552** also conveniently state that the issues they raise are of transcendental importance, "which must be settled early" and are of "far-reaching implications," without mention of any specific provision of RA 9372 under which they have been charged, or may be charged. Mere invocation of human rights advocacy has nowhere been held sufficient to clothe litigants with *locus standi*. Petitioners must show an actual, or immediate danger of sustaining, direct injury as a result of the law's enforcement. To rule otherwise would be to corrupt the settled doctrine of *locus standi*, as every worthy cause is an interest shared by the general public.

9. ID.; ID.; ID.; ID.; TAXPAYER STANDING AND CITIZEN STANDING; WHEN PRESENT.— Neither can *locus standi* be conferred upon individual petitioners as *taxpayers* and *citizens*. A taxpayer suit is proper only when there is an exercise of the spending or taxing power of Congress, whereas citizen standing must rest on direct and personal interest in the proceeding. RA 9372 is a penal statute and does not even provide for any appropriation from Congress for its implementation, while none of the individual petitioner-citizens has alleged any direct and personal interest in the implementation of the law.

10. ID.; ID.; ID.; ID.; REQUIRES EVIDENCE OF A DIRECT AND PERSONAL INTEREST.— It bears to stress that generalized interests, albeit accompanied by the assertion of a public right, do not establish *locus standi*. Evidence of a direct and personal interest is key.

11. ID.; ID.; ID.; OPERATES ONLY WHEN THERE IS ACTUAL CASE OR CONTROVERSY.— By constitutional fiat, judicial power operates only when there is an actual case or controversy. "Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to

settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." As early as *Angara v. Electoral Commission,* the Court ruled that the power of judicial review is limited to actual cases or controversies to be exercised after full opportunity of argument by the parties. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities.

12. ID.; ID.; ID.; ID.; ACTUAL CASE OR CONTROVERSY; DEFINED.— An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion.

13. ID.; ID.; ID.; ID.; A REASONABLE CERTAINTY OF THE OCCURRENCE OF A PERCEIVED THREAT TO ANY CONSTITUTIONAL INTEREST SUFFICES TO PROVIDE A BASIS FOR MOUNTING A CONSTITUTIONAL CHALLENGE; CONDITION.— The Court is not unaware that a reasonable certainty of the occurrence of a *perceived threat* to any constitutional interest suffices to provide a basis for mounting a constitutional challenge. This, however, is qualified by the requirement that there must be **sufficient facts** to enable the Court to intelligently adjudicate the issues. Very recently, the US Supreme Court, in *Holder v. Humanitarian Law Project*, allowed the *pre-enforcement review* of a criminal statute, challenged on vagueness grounds, since plaintiffs faced a "*credible threat of prosecution*" and "*should not be required to await and undergo a criminal prosecution as the sole means of seeking relief*." The plaintiffs therein filed an action before a federal court to assail the constitutionality of the material support statute, 18 U.S.C. §2339B (a) (1), proscribing the provision of material support to organizations declared by the Secretary of State as foreign terrorist organizations. They claimed that they *intended* to provide support for the humanitarian and political activities of two such organizations. Prevailing American jurisprudence allows an adjudication on the merits when an anticipatory petition **clearly shows that the challenged prohibition forbids the conduct or activity**

that a petitioner seeks to do, as there would then be **a justiciable controversy**.

14. ID.; ID.; ID.; ID.; ACTUAL CASE OR CONTROVERSY; NOT PRESENT IN CASE AT BAR.— [H]erein petitioners have failed to show that the challenged provisions of RA 9372 forbid **constitutionally protected** *conduct* or *activity* that they seek to do. No demonstrable threat has been established, much less a real and existing one. **Petitioners' obscure allegations of sporadic "surveillance" and supposedly being tagged as "communist fronts" in no way approximate a *credible threat of prosecution***. From these allegations, the Court is being lured to render an *advisory opinion*, which is not its function. Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are **merely theorized**, lie beyond judicial review for lack of ripeness. The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. Such possibility is not peculiar to RA 9372 since the exercise of any power granted by law may be abused. Allegations of abuse must be anchored on real events before courts may step in to settle **actual controversies involving rights which are legally demandable and enforceable**.

15. ID.; STATUTES; DOCTRINE OF VAGUENESS AND DOCTRINE OF OVERBREADTH, DISTINGUISHED.— *[T]he doctrine of vagueness and the doctrine of overbreadth do not operate on the same plane*. A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. The overbreadth doctrine, meanwhile, decrees that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved

by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms. As distinguished from the vagueness doctrine, the overbreadth doctrine assumes that individuals will understand what a statute prohibits and will accordingly refrain from that behavior, even though some of it is protected.

16. ID.; ID.; "FACIAL" CHALLENGE AND "AS-APPLIED CHALLENGE," DISTINGUISHED.— *A "facial" challenge is likewise different from an "as-applied" challenge*. Distinguished from an **as-applied** challenge which considers only extant facts affecting real litigants, a **facial** invalidation is an examination of the **entire law**, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities.

17. ID.; ID.; DOCTRINE OF VAGUENESS AND DOCTRINE OF OVERBREADTH; INAPPLICABLE AS GROUNDS TO FACIALLY CHALLENGE A PENAL LAW.— A litigant cannot x x x successfully mount a facial challenge against a criminal statute on either vagueness or overbreadth grounds. The allowance of a facial challenge in free speech cases is justified by the aim to avert the "chilling effect" on protected speech, the exercise of which should not at all times be abridged. x x x [T]his rationale is inapplicable to plain penal statutes that generally bear an "*in terrorem* effect" in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights.

18. ID.; ID.; PENAL LAWS; CANNOT BE SUBJECTED TO A FACIAL CHALLENGE; ELUCIDATED.—The Court reiterated that there are "critical limitations by which a criminal statute may be challenged" and "underscored that an 'on-its-face' invalidation of penal statutes x x x may not be allowed." "[T]he rule established in our jurisdiction is, only statutes on free speech, religious freedom, and other fundamental rights may be facially challenged. **Under no case may ordinary penal statutes be subjected to a facial challenge**. The rationale is obvious. If a facial challenge to a penal statute is permitted,

the prosecution of crimes may be hampered. No prosecution would be possible. A strong criticism against employing a facial challenge in the case of penal statutes, if the same is allowed, would effectively go against the grain of the doctrinal requirement of an existing and concrete controversy before judicial power may be appropriately exercised. A facial challenge against a penal statute is, at best, amorphous and speculative. It would, essentially, force the court to consider third parties who are not before it. As I have said in my opposition to the allowance of a facial challenge to attack penal statutes, such a test will impair the State's ability to deal with crime. If warranted, there would be nothing that can hinder an accused from defeating the State's power to prosecute on a mere showing that, as applied to third parties, the penal statute is vague or overbroad, notwithstanding that the law is clear as applied to him."

19. ID.; ID.; DOCTRINE OF OVERBREADTH; APPLICATION THEREOF IS LIMITED TO A FACIAL KIND OF CHALLENGE APPLICABLE ONLY TO FREE SPEECH CASES.— [T]**he application of the overbreadth doctrine is limited to a facial kind of challenge and, owing to the given rationale of a facial challenge, applicable only to free speech cases**. By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants. x x x In restricting the overbreadth doctrine to free speech claims, the Court, in at least two cases, observed that the US Supreme Court has not recognized an overbreadth doctrine outside the limited context of the First Amendment, and that claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words. In *Virginia v. Hicks*, it was held that rarely, if ever, will an overbreadth challenge succeed against a law or regulation that is not specifically addressed to speech or speech-related conduct. Attacks on overly broad statutes are justified by the "transcendent value to all society of constitutionally protected expression.

20. ID.; ID.; PENAL LAWS; MAY ONLY BE ASSAILED FOR BEING VAGUE AS APPLIED TO A PARTICULAR DEFENDANT.— While *Estrada* did not apply the overbreadth doctrine, it did not preclude the operation of the vagueness test on the Anti-Plunder Law *as applied* to the therein petitioner, finding, however, that there was no basis to review the law "on its face and in its entirety." It stressed that "statutes found vague *as a matter of due process* typically are invalidated only 'as applied' to a particular defendant." American jurisprudence instructs that "vagueness challenges that do not involve the First Amendment must be examined in light of the specific facts of the case at hand and not with regard to the statute's facial validity." For more than 125 years, the US Supreme Court has evaluated defendants' claims that criminal statutes are unconstitutionally vague, developing a doctrine hailed as "among the most important guarantees of liberty under law." In this jurisdiction, the void-for-vagueness doctrine asserted under the due process clause has been utilized in examining the constitutionality of criminal statutes. In at least three cases, the Court brought the doctrine into play in analyzing an ordinance penalizing the non-payment of municipal tax on fishponds, the crime of illegal recruitment punishable under Article 132(b) of the Labor Code, and the vagrancy provision under Article 202 (2) of the Revised Penal Code. Notably, the petitioners in these three cases, similar to those in the two *Romualdez* and *Estrada* cases, were actually **charged** with the therein assailed penal statute, unlike in the present case.

21. CRIMINAL LAW; REPUBLIC ACT NO. 9372 (THE HUMAN SECURITY ACT OF 2007); CRIME OF TERRORISM; ELEMENTS.— From the definition of the crime of terrorism x x x [under] Section 3 of RA 9372, the following elements may be culled: (1) the offender commits an act punishable under any of the cited provisions of the Revised Penal Code, or under any of the enumerated special penal laws; (2) the commission of the predicate crime sows and creates a condition of widespread and extraordinary fear and panic among the populace; and (3) the offender is actuated by the desire to coerce the government to give in to an unlawful demand.

22. ID.; ID.; SEEKS TO PENALIZE CONDUCT, NOT SPEECH.— What the law seeks to penalize is **conduct**, not speech. Before

a charge for terrorism may be filed under RA 9372, there must first be a predicate crime actually committed to trigger the operation of the key qualifying phrases in the other elements of the crime, including the coercion of the government to accede to an "unlawful demand." Given the presence of the first element, any attempt at singling out or highlighting the communicative component of the prohibition cannot recategorize the unprotected conduct into a protected speech. x x x Utterances not elemental but inevitably *incidental to* the doing of the criminal conduct alter neither the intent of the law to punish socially harmful **conduct** nor the essence of the whole act as **conduct** and not speech. This holds true *a fortiori* in the present case where the expression figures only as an inevitable incident of making the element of coercion perceptible. "[I]t is true that the agreements and course of conduct here were as in most instances brought about through speaking or writing. But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the *conduc*t was, *in part*, initiated, *evidenced*, or carried out *by means of language*, either spoken, written, or printed. Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society." Certain kinds of speech have been treated as unprotected conduct, because they merely evidence a prohibited conduct. Since speech is not involved here, the Court cannot heed the call for a facial nalysis.

ABAD*, J., concurring opinion:*

POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 9372 (THE HUMAN SECURITY ACT OF 2007); THE QUESTIONS RAISED IN CASE AT BAR MAY BE RAISED IN THE PROPER FORUM IF AND WHEN AN ACTUAL CONTROVERSY ARISES AND BECOMES RIPE FOR ADJUDICATION.— I concur with the majority opinion in dismissing the various petitions filed before this Court challenging the validity of Republic Act (R.A.) 9372. I feel a need to emphasize, however, that as the grounds for dismissal are more procedural than substantive, our decision in these

consolidated cases does not definitively uphold the validity of the questioned law. The specific questions raised by the petitioners against R.A. 9372 may be raised in the proper forum if and when an actual controversy arises and becomes ripe for adjudication.

APPEARANCES OF COUNSEL

Soliman M. Santos and *Vicente Dante P. Adan* for petitioner in G.R. No. 178552.

Remigio D. Saladero, Jr. and *Nenita C. Mahinay* for Kilusang Mayo Uno, *etc., et al.*

Edre U. Olalia for Bagong Alyansang Makabayan, *et al.*

Rex J.M.A. Fernandez and *Alfonso Cinco IV* for petitioner in G.R. No. 178890.

Pacifico Agabin, Rodolfo Urbiztondo & Neri Javier Colmenares for petitioners in G.R. No. 179157.

Ryan Matibag for petitioners in G.R. No. 179461.

The Solicitor General for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Before the Court are six petitions challenging the constitutionality of Republic Act No. 9372 (RA 9372), "An Act to Secure the State and Protect our People from Terrorism," otherwise known as the *Human Security Act of 2007*,[1] signed into law on March 6, 2007.

Following the effectivity of RA 9372 on July 15, 2007,[2] petitioner Southern Hemisphere Engagement Network, Inc., a non-government organization, and Atty. Soliman Santos, Jr., a concerned citizen, taxpayer and lawyer, filed a petition for *certiorari* and prohibition on July 16, 2007 docketed as **G.R. No. 178552.** On even date, petitioners Kilusang Mayo Uno (KMU), National

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[1] A consolidation of House Bill No. 4839 and Senate Bill No. 2137.

[2] REPUBLIC ACT No. 9372, Sec. 62.

Federation of Labor Unions-Kilusang Mayo Uno (NAFLU-KMU), and Center for Trade Union and Human Rights (CTUHR), represented by their respective officers[3] who are also bringing the action in their capacity as citizens, filed a petition for *certiorari* and prohibition docketed as **G.R. No. 178554**.

The following day, July 17, 2007, organizations Bagong Alyansang Makabayan (BAYAN), General Alliance Binding Women for Reforms, Integrity, Equality, Leadership and Action (GABRIELA), Kilusang Magbubukid ng Pilipinas (KMP), Movement of Concerned Citizens for Civil Liberties (MCCCL), Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), Kalipunan ng Damayang Mahihirap (KADAMAY), Solidarity of Cavite Workers (SCW), League of Filipino Students (LFS), Anakbayan, Pambansang Lakas ng Kilusang Mamamalakaya (PAMALAKAYA), Alliance of Concerned Teachers (ACT), Migrante, Health Alliance for Democracy (HEAD), and Agham, represented by their respective officers,[4] and joined by concerned citizens and taxpayers Teofisto Guingona, Jr., Dr. Bienvenido Lumbera, Renato Constantino, Jr., Sister Mary John Manansan, OSB, Dean Consuelo Paz, Atty. Josefina Lichauco, Retired Col. Gerry Cunanan, Carlitos Siguion-Reyna, Dr. Carolina Pagaduan-Araullo, Renato Reyes, Danilo Ramos, Emerenciana de Jesus, Rita Baua and Rey Claro Casambre filed a petition for *certiorari* and prohibition docketed as **G.R. No. 178581**.

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[3] KMU Chairperson Elmer Labog, NAFLU-KMU National President Joselito V. Ustarez and NAFLU-KMU Secretary General Antonio C. Pascual, and CTUHR Executive Director Daisy Arago.

[4] BAYAN Chairperson Dr. Carolina Pagaduan-Araullo, GABRIELA Secretary General Emerenciana de Jesus, KMP Secretary General Danilo Ramos, MCCCL Convenor Amado G. Inciong, COURAGE National President Ferdinand Gaite, KADAMAY Vice Chairperson Gloria G. Arellano, SCW Chairperson Merly Grafe, LFS National Chairperson Vencer Crisostomo, Anakbayan Secretary General Eleanor de Guzman, PAMALAKAYA Chairperson Fernando Hicap, ACT Chairperson Antonio Tinio, Migrante Chairperson Concepcion Bragas-Regalado, HEAD Deputy Secretary General Dr. Geneve Rivera, and Agham Chairperson Dr. Giovanni Tapang. Grafe and Tapang, however, failed to verify the petition.

On August 6, 2007, Karapatan and its alliance member organizations Hustisya, Desaparecidos, Samahan ng mga Ex-Detainees Laban sa Detensyon at para sa Amnestiya (SELDA), Ecumenical Movement for Justice and Peace (EMJP), and Promotion of Church People's Response (PCPR), which were represented by their respective officers[5] who are also bringing action on their own behalf, filed a petition for *certiorari* and prohibition docketed as **G.R. No. 178890**.

On August 29, 2007, the Integrated Bar of the Philippines (IBP), Counsels for the Defense of Liberty (CODAL),[6] Senator Ma. Ana Consuelo A.S. Madrigal, Sergio Osmeña III, and Wigberto E. Tañada filed a petition for *certiorari* and prohibition docketed as **G.R. No. 179157**.

Bagong Alyansang Makabayan-Southern Tagalog (BAYAN-ST), other regional chapters and organizations mostly based in the Southern Tagalog Region,[7] and

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[5] Dr. Edelina P. De La Paz for Karapatan, Evangeline Hernandez for Hustisya, Mary Guy Portajada for Desaparecidos, Donato Continente for SELDA, Bishop Elmer M. Bolocon for EMJP and Fr. Gilbert Sabado for PCPR.

[6] IBP is represented by Atty. Feliciano M. Bautista, national president, while CODAL is represented by Atty. Noel Neri, convenor/member.

[7] BAYAN-ST is represented by Secretary General Arman Albarillo; Katipunan ng mga Magsasaka sa Timog Katagulagan (KASAMA-TK) by Secretary General Orly Marcellana; Pagkakaisa ng mga Manggagawa sa Timog Katagalugan (PAMANTIK-KMU) by Regional Secretary General Luz Baculo; GABRIELA-Southern Tagalog by Secretary General Helen Asdolo; Organized Labor Association in Line Industries and Agriculture (OLALIA) by Chairperson Romeo Legaspi; Southern Tagalog Region Transport Organization (STARTER) by Regional Chairperson Rolando Mingo; Bayan Muna Partylist-ST by Regional Coordinator Bayani Cambronero; Anakbayan-ST by Regional Chairperson Pedro Santos, Jr.; LFS-ST by Spokesperson Mark Velasco; PAMALAKAYA-ST by Vice Chairperson Peter Gonzales, Bigkis at Lakas ng mga Katutubo sa Timog Katagalugan (BALATIK) by Regional Auditor Aynong Abnay; Kongreso ng mga Magbubukid para sa Repormang Agraryo (Kompra) represented by member Leng Jucutan; Martir ng Bayan with no representation; Pagkakaisa at Ugnayan ng nmga Magbubukid sa Laguna (PUMALAG) represented by Provincial Secretary General Darwin Liwag; and Los Baños Rural Poor Organization for Progress and Equality represented by Teodoro Reyes.

individuals[8] followed suit by filing on September 19, 2007 a petition for *certiorari* and prohibition docketed as **G.R. No. 179461** that replicates the allegations raised in the BAYAN petition in **G.R. No. 178581**.

Impleaded as respondents in the various petitions are the Anti-Terrorism Council[9] composed of, at the time of the filing of the petitions, Executive Secretary Eduardo Ermita as Chairperson, Justice Secretary Raul Gonzales as Vice Chairperson, and Foreign Affairs Secretary Alberto Romulo, Acting Defense Secretary and National Security Adviser Norberto Gonzales, Interior and Local Government Secretary Ronaldo Puno, and Finance Secretary Margarito Teves as members. All the petitions, except that of the IBP, also impleaded Armed Forces of the Philippines (AFP) Chief of Staff Gen. Hermogenes Esperon and Philippine National Police (PNP) Chief Gen. Oscar Calderon.

The Karapatan, BAYAN and BAYAN-ST petitions likewise impleaded President Gloria Macapagal-Arroyo and the support agencies for the Anti-Terrorism Council like the National Intelligence Coordinating Agency, National Bureau of Investigation, Bureau of Immigration, Office of Civil Defense, Intelligence Service of the AFP, Anti-Money Laundering Center, Philippine Center on Transnational Crime, and the PNP intelligence and investigative elements.

The petitions fail.

Petitioners' resort to certiorari is improper

Preliminarily, *certiorari* does not lie against respondents who do not exercise judicial or quasi-judicial functions. Section 1, Rule 65 of the Rules of Court is clear:

Section 1. *Petition for certiorari*.—When any tribunal, board or officer **exercising judicial or quasi-judicial functions** has **acted**

[8] Francesca Tolentino, Jannette Barrientos, Arnel Segune Beltran, Edgardo Bitara Yap, Oscar Lapida, Delfin de Claro, Sally Astera, Christian Niño Lajara, Mario Anicete, and Emmanuel Capulong.

[9] REPUBLIC ACT No. 9372, Sec. 53.

without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (Emphasis and underscoring supplied)

Parenthetically, petitioners do not even allege with any modicum of particularity how respondents acted without or in excess of their respective jurisdictions, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

The impropriety of *certiorari* as a remedy aside, the petitions fail just the same.

In constitutional litigations, the power of judicial review is limited by four exacting requisites, *viz*: (a) there must be an actual case or controversy; (b) petitioners must possess *locus standi*; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the *lis mota* of the case.[10]

In the present case, the dismal absence of the first two requisites, which are the most essential, renders the discussion of the last two superfluous.

Petitioners lack locus standi

Locus standi or legal standing requires *a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions*.[11]

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[10] *Francisco v. House of Representatives*, G.R. No. 160261, November 10, 2003, 415 SCRA 44, 133 (2003).

[11] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 633 (2000), citing *Baker v. Carr*, 369 U.S. 186 (1962).

Anak Mindanao Party-List Group v. The Executive Secretary[12] summarized the rule on *locus standi*, thus:

> *Locus standi* or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question on standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.
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> [A] party who assails the constitutionality of a statute must have **a direct and personal interest**. It must show not only that the law or any governmental act is invalid, but also that **it sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement**, and not merely that it suffers thereby in some indefinite way. It must show that it has been or is about to be denied some right or privilege to which it is lawfully entitled or that it is about to be subjected to some burdens or penalties by reason of the statute or act complained of.
>
> For a concerned party to be allowed to raise a constitutional question, it must show that (1) it has **personally suffered some actual or threatened injury** as a result of the allegedly illegal conduct of the government, (2) the injury is fairly traceable to the challenged action, and (3) the injury is likely to be redressed by a favorable action. (emphasis and underscoring supplied.)

Petitioner-organizations assert *locus standi* on the basis of being suspected "communist fronts" by the government, especially the military; whereas individual petitioners invariably invoke the "transcendental importance" doctrine and their status as citizens and taxpayers.

While *Chavez v. PCGG*[13] holds that transcendental public importance dispenses with the requirement that petitioner has experienced or is in actual danger of suffering direct and personal injury, cases involving the constitutionality of *penal* legislation belong to an altogether different genus of constitutional litigation.

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[12] G.R. No. 166052, August 29, 2007, 531 SCRA 583, 591-592.

[13] 360 Phil. 133 (1998).

Compelling State and societal interests in the proscription of harmful conduct, as will later be elucidated, necessitate a closer judicial scrutiny of *locus standi*.

Petitioners have not presented any *personal stake in the outcome of the controversy*. **None of them faces any charge under RA 9372**.

KARAPATAN, Hustisya, Desaparecidos, SELDA, EMJP and **PCR,** petitioners in G.R. No. 178890, allege that they have been subjected to "close security surveillance by state security forces," their members followed by "suspicious persons" and "vehicles with dark windshields," and their offices monitored by "men with military build." They likewise claim that they have been branded as "enemies of the [S]tate."[14]

Even conceding such gratuitous allegations, the Office of the Solicitor General (OSG) correctly points out that petitioners have yet to show any **connection between** the purported **"surveillance" and** the **implementation of RA 9372**.

BAYAN, GABRIELA, KMP, MCCCL, COURAGE, KADAMAY, SCW, LFS, Anakbayan, PAMALAKAYA, ACT, Migrante, HEAD and **Agham**, petitioner-organizations in G.R. No. 178581, would like the Court to take *judicial notice* of respondents' *alleged* action of tagging them as militant organizations fronting for the Communist Party of the Philippines (CPP) and its armed wing, the National People's Army (NPA). The tagging, according to petitioners, is tantamount to the effects of proscription without following the procedure under the law.[15] The petition of **BAYAN-ST, *et al***. in G.R. No. 179461 pleads the same allegations.

The Court cannot take judicial notice of the alleged "tagging" of petitioners.

Generally speaking, matters of judicial notice have three material requisites: (1) **the matter must be one of common and general knowledge**; (2) **it must be well and authoritatively settled and**

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[14] *Rollo* (G.R. No. 178890), pp. 11-12.

[15] *Rollo* (G.R. No. 178581), p. 17.

not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is **either**: (1) **generally known** within the territorial jurisdiction of the trial court; **or** (2) **capable of accurate and ready determination** by resorting to sources whose accuracy cannot reasonably be questionable.

Things of "common knowledge," of which courts take judicial matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided, they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. As the common knowledge of man ranges far and wide, a wide variety of particular facts have been judicially noticed as being matters of common knowledge. But **a court cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the court has no constructive knowledge**.[16] (emphasis and underscoring supplied.)

No ground was properly established by petitioners for the taking of judicial notice. Petitioners' apprehension is insufficient to substantiate their plea. That no specific charge or proscription under RA 9372 has been filed against them, three years after its effectivity, belies any claim of imminence of their *perceived* threat emanating from the so-called tagging.

The same is true with petitioners **KMU, NAFLU** and **CTUHR** in G.R. No. 178554, who merely harp as well on their supposed "link" to the CPP and NPA. They fail to particularize how the implementation of specific provisions of RA 9372 would result in direct injury to their organization and members.

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[16] *Vide Genesis Transport Service, Inc. v. Unyon ng Malayang Manggagawa ng Genesis Transport*, G.R. No. 182114, April 5, 2010.

While in our jurisdiction there is still no judicially declared terrorist organization, the United States of America[17] (US) and the European Union[18] (EU) have both classified the CPP, NPA and *Abu Sayyaf* Group as foreign terrorist organizations. The Court takes note of the joint statement of Executive Secretary Eduardo Ermita and Justice Secretary Raul Gonzales that the Arroyo Administration would adopt the US and EU classification of the CPP and NPA as terrorist organizations.[19] Such statement notwithstanding, **there is yet to be filed before the courts an application to declare the CPP and NPA organizations as domestic terrorist or outlawed organizations under RA 9372**. Again, RA 9372 has been in effect for three years now. From July 2007 up to the present, petitioner-organizations have conducted their activities fully and freely without any threat of, much less an actual, prosecution or proscription under RA 9372.

Parenthetically, the Fourteenth Congress, in a resolution initiated by Party-list Representatives Saturnino Ocampo, Teodoro Casiño, Rafael Mariano and Luzviminda Ilagan,[20] urged the government to resume peace negotiations with the NDF by removing the impediments thereto, one of which is the adoption of designation of the CPP and NPA by the US and EU as foreign terrorist organizations. Considering the policy statement of the Aquino Administration[21] of resuming peace talks with the NDF, the government is not imminently disposed to ask for

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[17] <http://www.state.gov/s/ct/rls/other/des/123085.htm> (last visited August 13, 2010).

[18] <http://eur-ex.europa.eu/LexUriServ/site/en/oj/2005/l_314/l_31420051130en00410045.pdf> and its recent update <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:023:0037:01:EN:HTM> on the Council Common Position (last visited August 13, 2010).

[19] Philippine Daily Inquirer, July 11, 2007, Page A-1. Visit also <http://newsinfo.inquirer.net/breakingnews/nation/view/20070711-75951/Reds_target_of_terror_law> (last visited August 16, 2010).

[20] House Resolution No. 641.

[21] In his State of the Nation Address, President Benigno Aquino III said: "x x x. *Tungkol naman po sa CPP-NPA-NDF: handa na ba kayong maglaan ng kongkretong mungkahi, sa halip na pawang batikos lamang?*

the judicial proscription of the CPP-NPA consortium and its allied organizations.

More important, there are other parties not before the Court with **direct and specific interests** in the questions being raised.[22] Of recent development is the filing of the **first case** for proscription under Section 17[23] of RA 9372 by the Department of Justice before the Basilan Regional Trial Court against the *Abu Sayyaf* Group.[24] Petitioner-organizations do not in the least allege any link to the *Abu Sayyaf* Group.

Kung kapayapaan din ang hangad ninyo, handa po kami sa malawakang tigil-putukan. Mag-usap tayo.

Mahirap magsimula ang usapan habang mayroon pang amoy ng pulbura sa hangin. Nananawagan ako: huwag po natin hayaang masayang ang napakagandang pagkakataong ito upang magtipon sa ilalim ng iisang adhikain.

Kapayapaan at katahimikan po ang pundasyon ng kaunlaran. Habang nagpapatuloy ang barilan, patuloy din ang pagkakagapos natin sa kahirapan. x x x." See: <http://www.gov.ph/2010/07/26/state-of-the-nation-address-2010> (last visited August 25, 2010).

[22] In *Francisco v. House of Representatives*, 460 Phil. 830, 899 (2003), the Court followed the determinants cited by Mr, Justice Florentino Feliciano in *Kilosbayan v. Guingona* for using the transcendental importance doctrine, to wit: (a) the character of the funds or other assets involved in the case; (b) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (c) the lack of any other party with a more direct and specific interest in the questions being raised.

[23] SEC. 17. *Proscription of Terrorist Organization, Association, or Group of Persons*. — Any organization, association, or group of persons organized for the purpose of engaging in terrorism, or which, although not organized for that purpose, actually uses acts to terrorize mentioned in this Act or to sow and create a condition of widespread fear and panic among the populace in order to coerce the government to give in to an unlawful demand shall, upon application of the Department of Justice before a competent Regional Trial Court, with due notice and opportunity to be heard given to the organization, association, or group of persons concerned, be declared as a terrorist and outlawed organization, association, or group of persons by the said Regional Trial Court.

[24] <http://www.philstar.com/Article.aspx?articleId=607149 &publicationSubCategoryId=63> (last visited: September 1, 2010).

Some petitioners attempt, in vain though, to show the imminence of a prosecution under RA 9372 by alluding to past rebellion charges against them.

In *Ladlad v. Velasco*,[25] the Court ordered the dismissal of rebellion charges filed in 2006 against then Party-List Representatives Crispin Beltran and Rafael Mariano of Anakpawis, Liza Maza of GABRIELA, and Joel Virador, Teodoro Casiño and Saturnino Ocampo of *Bayan Muna*. Also named in the dismissed rebellion charges were petitioners Rey Claro Casambre, Carolina Pagaduan-Araullo, Renato Reyes, Rita Baua, Emerencia de Jesus and Danilo Ramos; and accused of being front organizations for the Communist movement were petitioner-organizations KMU, BAYAN, GABRIELA, PAMALAKAYA, KMP, KADAMAY, LFS and COURAGE.[26]

The dismissed rebellion charges, however, do not save the day for petitioners. For one, those charges were filed in 2006, prior to the enactment of RA 9372, and dismissed by this Court. For another, rebellion is defined and punished under the Revised Penal Code. Prosecution for rebellion is not made more imminent by the enactment of RA 9372, nor does the enactment thereof make it easier to charge a person with rebellion, its elements not having been altered.

Conversely, previously filed but dismissed rebellion charges bear no relation to prospective charges under RA 9372. It cannot be overemphasized that three years after the enactment of RA 9372, none of petitioners has been charged.

Petitioners **IBP** and **CODAL** in **G.R. No. 179157** base their claim of *locus standi* on their sworn duty to uphold the Constitution. The IBP zeroes in on Section 21 of RA 9372 directing it to render assistance to those arrested or detained under the law.

The mere invocation of the duty to preserve the rule of law does not, however, suffice to clothe the IBP or any of its members

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[25] G.R. Nos. 172070-72, June 1, 2007, 523 SCRA 318.

[26] *Rollo* (G.R. No. 178581), pp. 111-125.

with standing.[27] The IBP failed to sufficiently demonstrate how its mandate under the assailed statute revolts against its constitutional rights and duties. Moreover, both the IBP and CODAL have not pointed to even a single arrest or detention effected under RA 9372.

Former Senator Ma. Ana Consuelo Madrigal, who claims to have been the subject of "political surveillance," also lacks *locus standi*. Prescinding from the veracity, let alone legal basis, of the claim of "political surveillance," the Court finds that she has not shown even the slightest threat of being charged under RA 9372. Similarly lacking in *locus standi* are **former Senator Wigberto Tañada** and **Senator Sergio Osmeña III**, who cite their being respectively a human rights advocate and an oppositor to the passage of RA 9372. Outside these gratuitous statements, no concrete injury to them has been pinpointed.

Petitioners **Southern Hemisphere Engagement Network** and **Atty. Soliman Santos Jr.** in **G.R. No. 178552** also conveniently state that the issues they raise are of transcendental importance, "which must be settled early" and are of "far-reaching implications," without mention of any specific provision of RA 9372 under which they have been charged, or may be charged. Mere invocation of human rights advocacy has nowhere been held sufficient to clothe litigants with *locus standi*. Petitioners must show an actual, or immediate danger of sustaining, direct injury as a result of the law's enforcement. To rule otherwise would be to corrupt the settled doctrine of *locus standi*, as every worthy cause is an interest shared by the general public.

Neither can *locus standi* be conferred upon individual petitioners as *taxpayers* and *citizens*. A taxpayer suit is proper only when there is an exercise of the spending or taxing power of Congress,[28] whereas citizen standing must rest on direct and personal interest in the proceeding.[29]

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[27] *Supra* note 22 at 896.

[28] *Gonzales v. Hon. Narvasa*, 392 Phil. 518, 525 (2000), citing *Flast v. Cohen*, 392 US 83, 20 L Ed 2d 947, 88 S Ct 1942.

[29] *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Comelec*, G.R. No. 132922, April 21, 1998, 289 SCRA 337.

RA 9372 is a penal statute and does not even provide for any appropriation from Congress for its implementation, while none of the individual petitioner-citizens has alleged any direct and personal interest in the implementation of the law.

It bears to stress that generalized interests, albeit accompanied by the assertion of a public right, do not establish *locus standi.* Evidence of a direct and personal interest is key.

Petitioners fail to present an actual case or controversy

By constitutional fiat, judicial power operates only when there is an actual case or controversy.

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to **settle actual controversies involving rights which are legally demandable and enforceable**, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[30] (emphasis and underscoring supplied.)

As early as *Angara v. Electoral Commission,*[31] the Court ruled that the power of judicial review is limited to actual cases or controversies to be exercised after full opportunity of argument by the parties. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities.

An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion.[32]

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[30] CONSTITUTION, Article VIII, Section 1.

[31] 63 Phil. 139, 158 (1936).

[32] *Republic Telecommunications Holding, Inc. v. Santiago,* G.R. No. 140338, August 7, 2007, 529 SCRA 232, 243.

Information Technology Foundation of the Philippines v. COMELEC[33] cannot be more emphatic:

> **[C]ourts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging.** The controversy must be justiciable—definite and concrete, touching on the legal relations of parties having adverse legal interests. In other words, **the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other hand; that is, it must concern a real and not merely a theoretical question or issue.** There ought to be **an actual and substantial controversy** admitting of specific relief through a decree conclusive in nature, **as distinguished from** an opinion advising what the law would be upon **a hypothetical state of facts**. (Emphasis and underscoring supplied)

Thus, a petition to declare unconstitutional a law converting the Municipality of Makati into a Highly Urbanized City was held to be premature as it was tacked on uncertain, contingent events.[34] Similarly, a petition that fails to allege that an application for a license to operate a radio or television station has been denied or granted by the authorities does not present a justiciable controversy, and merely wheedles the Court to rule on a hypothetical problem.[35]

The Court dismissed the petition in *Philippine Press Institute v. Commission on Elections*[36] for failure to cite any specific affirmative action of the Commission on Elections to implement the assailed resolution. It refused, in *Abbas v. Commission on Elections*,[37] to rule on the religious freedom claim of the therein petitioners based merely on a perceived potential conflict between the provisions of the Muslim Code and those of the national law, there being no actual controversy between real litigants.

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[33] 499 Phil. 281, 304-305 (2005).

[34] *Mariano, Jr. v. Commission on Elections*, 312 Phil. 259 (1995).

[35] *Allied Broadcasting Center v. Republic*, G.R. No. 91500, October 18, 1990, 190 SCRA 782.

[36] 314 Phil. 131 (1995).

[37] G.R. No. 89651, November 10, 1989, 179 SCRA 287.

The list of cases denying claims resting on purely hypothetical or anticipatory grounds goes on *ad infinitum.*

The Court is not unaware that a reasonable certainty of the occurrence of a *perceived threat* to any constitutional interest suffices to provide a basis for mounting a constitutional challenge. This, however, is qualified by the requirement that there must be **sufficient facts** to enable the Court to intelligently adjudicate the issues.[38]

Very recently, the US Supreme Court, in *Holder v. Humanitarian Law Project*,[39] allowed the *pre-enforcement review* of a criminal statute, challenged on vagueness grounds, since plaintiffs faced a "*credible threat of prosecution*" and "*should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.*"[40] The plaintiffs therein filed an action before a federal court to assail the constitutionality of the material support statute, 18 U.S.C. §2339B (a) (1),[41] proscribing the provision of material support to organizations declared by the Secretary of State as foreign terrorist organizations.

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[38] *De Castro v. Judicial and Bar Council*, G.R. No. 191002, March 17, 2010, citing *Buckley v. Valeo*, 424 U.S. 1, 113-118 (1976) and *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 138-148 (1974).

[39] 561 U.S. [unpaginated] (2010). Volume 561 is still pending completion.

[40] *Id.* citing *Babbitt v. Farm Workers, supra*.

[41] § 2339B. Providing material support or resources to designated foreign terrorist organizations.

(a) Prohibited Activities.—

(1) Unlawful conduct.— Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in Section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in Section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

They claimed that they *intended* to provide support for the humanitarian and political activities of two such organizations.

Prevailing American jurisprudence allows an adjudication on the merits when an anticipatory petition **clearly shows that the challenged prohibition forbids the conduct or activity that a petitioner seeks to do, as there would then be a justiciable controversy.**[42]

Unlike the plaintiffs in *Holder*, however, herein petitioners have failed to show that the challenged provisions of RA 9372 forbid **constitutionally protected** *conduct* or *activity* that they seek to do. No demonstrable threat has been established, much less a real and existing one.

Petitioners' obscure allegations of sporadic "surveillance" and supposedly being tagged as "communist fronts" in no way approximate a *credible threat of prosecution*. From these allegations, the Court is being lured to render an *advisory opinion*, which is not its function.[43]

Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are **merely theorized**, lie beyond judicial review for lack of ripeness.[44]

The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. Such possibility is not peculiar to RA 9372 since the exercise of any power granted by law

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[42] *Doe v. Bolton*, 410 U.S. 179, 188-189 (1973).

[43] *Automotive Industry Workers Alliance v. Romulo*, G.R. No. 157509, January 18, 2005, 449 SCRA 1, 10, citing *Allied Broadcasting Center, Inc. v. Republic*, G.R. No. 91500, October 18, 1990, 190 SCRA 782.

[44] LAWRENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW Vol. I, p.332 (3rd ed. 2000), citing *Steffel v. Thompson*, 415 U.S. 452 (1974) and *Ellis v. Dyson*, 421 U.S. 426 (1975).

may be abused.[45] Allegations of abuse must be anchored on real events before courts may step in to settle **actual controversies involving rights which are legally demandable and enforceable**.

A facial invalidation of a statute is allowed only in free speech cases, wherein certain rules of constitutional litigation are rightly excepted

Petitioners assail for being intrinsically vague and impermissibly broad the definition of the crime of terrorism[46] under RA 9372 in that terms like "*widespread and extraordinary fear and panic among the populace*" and "*coerce the government to give in*

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[45] *Vide Garcia v. Commission on Elections*, G.R. No. 111511, October 5, 1993, 227 SCRA 100, 117, stating that "all powers are susceptible of abuse. The mere possibility of abuse cannot, however, infirm per se the grant of power[.]"

[46] RA 9372 defines the crime of terrorism as follows:

SEC. 3. *Terrorism*. – Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

a. Article 222 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);

b. Article 134 (Rebellion or Insurrection);

c. Article 134-a (Coup d'etat), including acts committed by private persons;

d. Article 248 (Murder);

e. Article 267 (Kidnapping and Serious Illegal Detention);

f. Article 324 (Crimes Involving Destruction); or under

1. Presidential Decree No. 1613 (The Law on Arson);

2. Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);

3. Republic Act No. 5207 (Atomic Energy Regulatory and Liability Act of 1968);

4. Republic Act No. 6235 (Anti-Hijacking Law);

5. Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and,

to an unlawful demand" are nebulous, leaving law enforcement agencies with no standard to measure the prohibited acts.

Respondents, through the OSG, counter that the doctrines of void-for-vagueness and overbreadth find no application in the present case since these doctrines apply only to free speech cases; and that RA 9372 regulates conduct, not speech.

For a jurisprudentially guided understanding of these doctrines, it is imperative to outline the schools of thought on whether the void-for-vagueness and overbreadth doctrines are *equally applicable* grounds to assail a **penal** statute.

Respondents interpret recent jurisprudence as slanting toward the idea of limiting the application of the two doctrines to free speech cases. They particularly cite *Romualdez v. Hon. Sandiganbayan*[47] and *Estrada v. Sandiganbayan.*[48]

The Court clarifies.

At issue in *Romualdez v. Sandiganbayan* was whether the word "intervene" in Section 5[49] of the Anti-Graft and Corrupt Practices Act was intrinsically vague and impermissibly broad.

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6. Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives)

thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

[47] 479 Phil. 265 (2004).

[48] 421 Phil. 290 (2001).

[49] REPUBLIC ACT No. 3019, Sec. 5. *Prohibition on certain relatives.* It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or application with the Government x x x. (Underscoring supplied)

The Court stated that "the overbreadth and the vagueness doctrines have special application only to free-speech cases," and are "not appropriate for testing the validity of penal statutes."[50] It added that, at any rate, the challenged provision, under which the therein petitioner was ***charged,*** is not vague.[51]

While in the subsequent case of *Romualdez v. Commission on Elections*,[52] the Court stated that a facial invalidation of criminal statutes is not appropriate, it nonetheless proceeded to conduct a vagueness analysis, and concluded that the therein subject election offense[53] under the Voter's Registration Act of 1996, with which the therein petitioners were ***charged***, is couched in precise language.[54]

The two *Romualdez* cases rely heavily on the Separate Opinion[55] of Justice Vicente V. Mendoza in the *Estrada* case, where the Court found the Anti-Plunder Law (Republic Act No. 7080) clear and free from ambiguity respecting the definition of the crime of plunder.

The position taken by Justice Mendoza in *Estrada* relates these two doctrines to the concept of a "facial" invalidation as opposed to an "as-applied" challenge. He basically postulated that allegations that a penal statute is vague and overbroad do not justify a facial review of its validity. The pertinent portion of the Concurring Opinion of Justice Mendoza, which was quoted at length in the main *Estrada* decision, reads:

A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or

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[50] *Romualdez v. Hon. Sandiganbayan, supra* at 281.

[51] *Id.* at 288.

[52] G.R. No. 167011, April 30, 2008, 553 SCRA 370.

[53] Punishable under Section 45(j) in relation to Section 10(g) or (j) of Republic Act No. 8189.

[54] *Romualdez v. Commission on Elections, supra* at 284.

[55] *Estrada v. Sandiganbayan, supra* at 421-450.

proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity." The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.

This rationale does not apply to penal statutes. Criminal statutes have general *in terrorem* effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.

The overbreadth and vagueness doctrines then have special application only to free speech cases. They are inapt for testing the validity of penal statutes. As the U.S. Supreme Court put it, in an opinion by Chief Justice Rehnquist, "we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment." In *Broadrick v. Oklahoma*, the Court ruled that "claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words" and, again, that "overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct." For this reason, it has been held that "a facial challenge to a legislative act is the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." As for the vagueness doctrine, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. "A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others."

In sum, the **doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or**, as they are called in American law, **First Amendment cases**. They cannot be made to

do service **when what is involved** is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional." As has been pointed out, "vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, **while statutes found vague** as a matter of due process typically **are invalidated [only] 'as applied' to a particular defendant."** Consequently, there is no basis for petitioner's claim that this Court review the Anti-Plunder Law on its face and in its entirety.

Indeed, "on its face" invalidation of statutes results in striking them down entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected. It constitutes a departure from the case and controversy requirement of the Constitution and permits decisions to be made without concrete factual settings and in sterile abstract contexts. But, as the U.S. Supreme Court pointed out in *Younger v. Harris*

> [T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes, . . . ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided.

For these reasons, "on its face" invalidation of statutes has been described as "manifestly strong medicine," to be employed "sparingly and only as a last resort," and is generally disfavored. In determining the constitutionality of a statute, therefore, its provisions which are alleged to have been violated in a case must be examined in the light of the conduct with which the defendant is charged.[56] (Underscoring supplied.)

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[56] *Id.* at 353-356.

The confusion apparently stems from the interlocking relation of the *overbreadth* and *vagueness* doctrines as grounds for a *facial* or *as-applied* challenge against a penal statute (under a claim of violation of due process of law) or a speech regulation (under a claim of abridgement of the freedom of speech and cognate rights).

To be sure, the doctrine of vagueness and the doctrine of overbreadth do not operate on the same plane.

A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[57] The overbreadth doctrine, meanwhile, decrees that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.[58]

As distinguished from the vagueness doctrine, the overbreadth doctrine assumes that individuals will understand what a statute prohibits and will accordingly refrain from that behavior, even though some of it is protected.[59]

A "facial" challenge is likewise different from an "as-applied" challenge.

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[57] *People v. Nazario*, No. L-44143, August 31, 1988, 165 SCRA 186, 195.

[58] *Blo Umpar Adiong v. Commission on Elections*, G.R. No. 103956, March 31, 1992, 207 SCRA 712, 719-720.

[59] Andrew E. Goldsmith, *The Void-for-Vagueness Doctrine in the Supreme Court, Revisited*, 30 Am. J. Crim. L. 279 (2003), note 39, citing Michael C. Dorf, *Facial Challenges to State and Federal Statutes*, 46 Stan. L. Rev. 235, 261-262 (1994).

Distinguished from an **as-applied** challenge which considers only extant facts affecting real litigants, a **facial** invalidation is an examination of the **entire law**, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities.[60]

Justice Mendoza accurately phrased the subtitle[61] in his concurring opinion that the vagueness and overbreadth doctrines, *as grounds for a facial challenge*, are not applicable to **penal** laws. **A litigant cannot thus successfully mount a facial challenge against a criminal statute on either vagueness or overbreadth grounds.**

The allowance of a facial challenge in free speech cases is justified by the aim to avert the "chilling effect" on protected speech, the exercise of which should not at all times be abridged.[62] As reflected earlier, this rationale is inapplicable to plain penal statutes that generally bear an "*in terrorem* effect" in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights.[63]

The Court reiterated that there are "critical limitations by which a criminal statute may be challenged" and "underscored

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[60] *Vide David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160, 239; *Romualdez v. Commission on Elections*, *supra* at 418, note 35.

[61] *Estrada v. Sandiganbayan*, *supra* at 429.

[62] CONSTITUTION, Art. III, Sec. 4.

[63] The power to define crimes and prescribe their corresponding penalties is legislative in nature and inherent in the sovereign power of the state to maintain social order as an aspect of police power. The legislature may even forbid and penalize acts formerly considered innocent and lawful provided that no constitutional rights have been abridged. (*People v. Siton*, G.R. No. 169364, September 18, 2009, 600 SCRA 476, 485).

that an 'on-its-face' invalidation of penal statutes x x x may not be allowed."[64]

[T]he rule established in our jurisdiction is, only statutes on free speech, religious freedom, and other fundamental rights may be facially challenged. **Under no case may ordinary penal statutes be subjected to a facial challenge**. The rationale is obvious. If a facial challenge to a penal statute is permitted, the prosecution of crimes may be hampered. No prosecution would be possible. A strong criticism against employing a facial challenge in the case of penal statutes, if the same is allowed, would effectively go against the grain of the doctrinal requirement of an existing and concrete controversy before judicial power may be appropriately exercised. A facial challenge against a penal statute is, at best, amorphous and speculative. It would, essentially, force the court to consider third parties who are not before it. As I have said in my opposition to the allowance of a facial challenge to attack penal statutes, such a test will impair the State's ability to deal with crime. If warranted, there would be nothing that can hinder an accused from defeating the State's power to prosecute on a mere showing that, as applied to third parties, the penal statute is vague or overbroad, notwithstanding that the law is clear as applied to him.[65] (Emphasis and underscoring supplied)

It is settled, on the other hand, that **the application of the overbreadth doctrine is limited to a facial kind of challenge and, owing to the given rationale of a facial challenge, applicable only to free speech cases**.

By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.

The most distinctive feature of the overbreadth technique is that it marks an exception to some of the usual rules of constitutional

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[64] *Romualdez v. Commission on Elections, supra* at 643.

[65] *Id.* at 645-646.

litigation. Ordinarily, a particular litigant claims that a statute is unconstitutional as applied to him or her; if the litigant prevails, the courts carve away the unconstitutional aspects of the law by invalidating its improper applications on a case to case basis. Moreover, challengers to a law are not permitted to raise the rights of third parties and can only assert their own interests. In overbreadth analysis, those rules give way; challenges are permitted to raise the rights of third parties; and the court invalidates the entire statute "on its face," not merely "as applied for" so that the overbroad law becomes unenforceable until a properly authorized court construes it more narrowly. The factor that motivates courts to depart from the normal adjudicatory rules is the concern with the "chilling;" deterrent effect of the overbroad statute on third parties not courageous enough to bring suit. The Court assumes that an overbroad law's "very existence may cause others not before the court to refrain from constitutionally protected speech or expression." An overbreadth ruling is designed to remove that deterrent effect on the speech of those third parties.[66] (Emphasis in the original omitted; underscoring supplied.)

In restricting the overbreadth doctrine to free speech claims, the Court, in at least two cases,[67] observed that the US Supreme Court has not recognized an overbreadth doctrine outside the limited context of the First Amendment,[68] and that claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words.[69] In *Virginia v. Hicks*,[70] it was held that rarely, if ever, will an overbreadth challenge succeed against a law or regulation that is not specifically addressed to speech or speech-related conduct. Attacks on overly broad statutes are justified by the "transcendent value to all society of constitutionally protected expression."[71]

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[66] *David v. Macapagal-Arroyo*, *supra* at 238.

[67] *Estrada v. Sandiganbayan*, *supra*; *David v. Macapagal-Arroyo*, *supra*.

[68] *Estrada v. Sandiganbayan*, *supra* at 354.

[69] *Id*.

[70] 539 U.S. 113, 156 L. Ed. 2d 148 (2003).

[71] *Gooding v. Wilson*, 405 U.S. 518, 31 L. Ed 2d 408 (1972).

Since a penal statute may only be assailed for being vague as applied to petitioners, a limited vagueness analysis of the definition of "terrorism" in RA 9372 is legally impermissible absent an actual or imminent charge against them

While *Estrada* did not apply the overbreadth doctrine, it did not preclude the operation of the vagueness test on the Anti-Plunder Law *as applied* to the therein petitioner, finding, however, that there was no basis to review the law "on its face and in its entirety."[72] It stressed that "statutes found vague *as a matter of due process* typically are invalidated only 'as applied' to a particular defendant."[73]

American jurisprudence[74] instructs that "vagueness challenges that do not involve the First Amendment must be examined in light of the specific facts of the case at hand and not with regard to the statute's facial validity."

For more than 125 years, the US Supreme Court has evaluated defendants' claims that criminal statutes are unconstitutionally vague, developing a doctrine hailed as "among the most important guarantees of liberty under law."[75]

In this jurisdiction, the void-for-vagueness doctrine asserted under the due process clause has been utilized in examining the

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[72] *Estrada v. Sandiganbayan*, *supra* at 355.

[73] *Id*.

[74] *United States v. Waymer*, 55 F.3d 564 (11th Circ. 1995) cert. denied, 517 U.S. 1119, 134 L. Ed. 2d 519 (1996); *Chapman v. United States*, 500 U.S. 453, 114 L. Ed 2d 524 (1991); *United States v. Powell*, 423 U.S. 87, 46 L. Ed. 2d 228 (1975); *United States v. Mazurie*, 419 U.S. 544, 42 L. Ed 2d 706 (1975).

[75] Andrew E. Goldsmith, *The Void-for-Vagueness Doctrine in the Supreme Court, Revisited*, 30 Am. J. Crim. L. 279 (2003).

constitutionality of criminal statutes. In at least three cases,[76] the Court brought the doctrine into play in analyzing an ordinance penalizing the non-payment of municipal tax on fishponds, the crime of illegal recruitment punishable under Article 132(b) of the Labor Code, and the vagrancy provision under Article 202 (2) of the Revised Penal Code. Notably, the petitioners in these three cases, similar to those in the two *Romualdez* and *Estrada* cases, were actually **charged** with the therein assailed penal statute, unlike in the present case.

There is no merit in the claim that RA 9372 regulates speech so as to permit a facial analysis of its validity

From the definition of the crime of terrorism in the earlier cited Section 3 of RA 9372, the following elements may be culled: (1) the offender commits an act punishable under any of the cited provisions of the Revised Penal Code, or under any of the enumerated special penal laws; (2) the commission of the predicate crime sows and creates a condition of widespread and extraordinary fear and panic among the populace; and (3) the offender is actuated by the desire to coerce the government to give in to an unlawful demand.

In insisting on a *facial* challenge on the invocation that the law penalizes *speech*, petitioners contend that the element of "unlawful demand" in the definition of terrorism[77] must necessarily be transmitted through some form of expression protected by the free speech clause.

The argument does not persuade. What the law seeks to penalize is **conduct**, not speech.

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[76] *People v. Nazario,* No. L-44143, August 31, 1988, 165 SCRA 186; *People v. Dela Piedra,* G.R. No. 121777, January 24, 2001, 350 SCRA 163; *People v. Siton,* G.R. No. 169364, September 18, 2009, 600 SCRA 476.

[77] Republic Act No. 9372, Sec. 3, *supra*.

Before a charge for terrorism may be filed under RA 9372, there must first be a predicate crime actually committed to trigger the operation of the key qualifying phrases in the other elements of the crime, including the coercion of the government to accede to an "unlawful demand." Given the presence of the first element, any attempt at singling out or highlighting the communicative component of the prohibition cannot recategorize the unprotected conduct into a protected speech.

Petitioners' notion on the transmission of message is entirely inaccurate, as it unduly focuses on just one particle of an element of the crime. Almost every commission of a crime entails some mincing of words on the part of the offender like in declaring to launch overt criminal acts against a victim, in haggling on the amount of ransom or conditions, or in negotiating a deceitful transaction. An analogy in one U.S. case[78] illustrated that the fact that the prohibition on discrimination in hiring on the basis of race will require an employer to take down a sign reading "White Applicants Only" hardly means that the law should be analyzed as one regulating speech rather than conduct.

Utterances not elemental but inevitably *incidental to* the doing of the criminal conduct alter neither the intent of the law to punish socially harmful **conduct** nor the essence of the whole act as **conduct** and not speech. This holds true *a fortiori* in the present case where the expression figures only as an inevitable incident of making the element of coercion perceptible.

> [I]t is true that the agreements and course of conduct here were as in most instances brought about through speaking or writing. But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the *conduc*t was, *in part*, initiated, *evidenced*, or carried out *by means of language*, either spoken, written, or printed. Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements

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[78] *Rumsfield v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 164 L.Ed 2d 156 (2006).

and conspiracies deemed injurious to society.[79] (italics and underscoring supplied)

Certain kinds of speech have been treated as unprotected conduct, because they merely evidence a prohibited conduct.[80] Since speech is not involved here, the Court cannot heed the call for a facial analysis.

IN FINE, *Estrada* and the other cited authorities engaged in a vagueness analysis of the therein subject penal statute as applied to the therein petitioners inasmuch as they were **actually charged** with the pertinent crimes challenged on vagueness grounds. The Court in said cases, however, found no basis to review the assailed penal statute on its face and in its entirety.

In *Holder,* on the other hand, the US Supreme Court allowed the *pre-enforcement review* of a criminal statute, challenged on vagueness grounds, since the therein plaintiffs faced a **"credible threat of prosecution**" and "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.*"*

As earlier reflected, petitioners have established **neither an actual charge nor a credible threat of prosecution** under RA 9372. Even a limited vagueness analysis of the assailed definition of "terrorism" is thus legally impermissible. The Court reminds litigants that judicial power neither contemplates

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[79] *Giboney v. Empire Storage and Ice Co*., 336 U.S. 490, 93 L. Ed. 834, 843-844 (1949); Cf *Brown v. Hartlage*, 456 U.S. 45, 71 L. Ed 2d 732, 742 (1982) that acknowledges: x x x The fact that such an agreement [to engage in illegal conduct] necessarily takes the form of words does not confer upon it, or upon the underlying conduct, the constitutional immunities that the First Amendment extends to speech. Finally, while a solicitation to enter into an agreement arguably crosses the sometimes hazy line distinguishing conduct from pure speech, such a solicitation, even though it may have an impact in the political arena, remains in essence an invitation to engage in an illegal exchange for private profit, and may properly be prohibited.

[80] *Vide* Eugene Volokh, *Speech as Conduct: Generally Applicable Laws, Illegal Courses of Conduct, "Situation-Altering Utterances," and the Uncharted Zones*, 90 Cornell L. Rev. 1277, 1315 (2005).

speculative counseling on a statute's future effect on hypothetical scenarios nor allows the courts to be used as an extension of a failed legislative lobbying in Congress.

WHEREFORE, the petitions are *DISMISSED.*

SO ORDERED.

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

Abad, J., the *C.J.* certifies that *J.* Abad who is on official business submitted a concurring opinion — by: *C.J.* Corona.

Carpio, J., on official leave.

CONCURRING OPINION

ABAD, *J.*:

I concur with the majority opinion in dismissing the various petitions filed before this Court challenging the validity of Republic Act (R.A.) 9372. I feel a need to emphasize, however, that as the grounds for dismissal are more procedural than substantive, our decision in these consolidated cases does not definitively uphold the validity of the questioned law. The specific questions raised by the petitioners against R.A. 9372 may be raised in the proper forum if and when an actual controversy arises and becomes ripe for adjudication.

EN BANC

[G.R. No. 184769. October 5, 2010]

MANILA ELECTRIC COMPANY, ALEXANDER S. DEYTO and RUBEN A. SAPITULA, *petitioners, vs.* **ROSARIO GOPEZ LIM,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; RULE OF WRIT OF *HABEAS DATA*; GENERALLY DESIGNED TO PROTECT BY MEANS OF JUDICIAL COMPLAINT THE IMAGE, PRIVACY, HONOR, INFORMATION, AND FREEDOM OF INFORMATION OF AN INDIVIDUAL.— Section 1 of the Rule on the Writ of *Habeas Data* provides: "Section 1. *Habeas Data*. — The writ of *habeas data* is a remedy available to any person whose **right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission** of a public official or employee or of a private individual or entity **engaged in the gathering, collecting or storing of data or information** regarding the person, family, home and correspondence of the aggrieved party." The *habeas data* rule, in general, is designed to protect by means of judicial complaint the image, privacy, honor, information, and freedom of information of an individual. It is meant to provide a forum to enforce one's right to the truth and to informational privacy, thus safeguarding the constitutional guarantees of a person's right to life, liberty and security against abuse in this age of information technology.

2. ID.; ID.; ID.; INTENDED TO ADDRESS VIOLATIONS OF OR THREATS TO THE RIGHTS TO LIFE, LIBERTY OR SECURITY AS A REMEDY INDEPENDENTLY FROM THOSE PROVIDED UNDER PREVAILING RULES.— It bears reiteration that like the writ of *amparo*, *habeas data* was conceived as a response, given the lack of effective and available remedies, to address the extraordinary rise in the number of killings and enforced disappearances. Its intent is to address violations of or threats to the rights to life, liberty or security as a remedy independently from those provided under prevailing Rules.

3. ID.; ID.; ID.; WRIT OF *HABEAS DATA*; WILL NOT ISSUE TO PROTECT PURELY PROPERTY OR COMMERCIAL CONCERNS NOR WHEN THE GROUNDS INVOKED IN SUPPORT OF THE PETITION THEREFOR ARE VAGUE OR DOUBTFUL; CASE AT BAR.— *Castillo v. Cruz* underscores the emphasis laid down in *Tapuz v. del Rosario* that the writs of *amparo* and *habeas data* will NOT issue to protect purely property or commercial concerns nor when the grounds invoked in support of the petitions therefor are vague or doubtful. Employment constitutes a property right under the context of the due process clause of the Constitution. It is evident that respondent's reservations on the real reasons for her transfer — a legitimate concern respecting the terms and conditions of one's employment - are what prompted her to adopt the extraordinary remedy of *habeas data*. Jurisdiction over such concerns is inarguably lodged by law with the NLRC and the Labor Arbiters.

4. ID.; ID.; ID.; ID.; UNLAWFUL VIOLATION OF THE RIGHT TO PRIVACY IN RELATION TO THE RIGHT TO LIFE, LIBERTY OR SECURITY, NOT ESTABLISHED IN CASE AT BAR.— [T]here is no showing from the facts presented that petitioners committed any unjustifiable or unlawful violation of respondent's **right to privacy** *vis-a-vis* the right to life, liberty or security. To argue that petitioners' refusal to disclose the contents of reports allegedly received on the threats to respondent's safety amounts to a violation of her right to privacy is at best speculative. Respondent in fact trivializes these threats and accusations from unknown individuals in her earlier-quoted portion of her July 10, 2008 letter as "highly suspicious, doubtful or are just mere jokes if they existed at all." And she even suspects that her transfer to another place of work "betray[s] the real intent of management]" and could be a "punitive move." Her posture unwittingly concedes that the issue is labor-related.

APPEARANCES OF COUNSEL

Horatio Enrico M. Bona Teresita M. Magpayo Elias M. Santos Lynnette Delorina-Manarang for petitioners.

Romerico S. Edpera for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

The Court is once again confronted with an opportunity to define the evolving metes and bounds of the writ of *habeas data*. May an employee invoke the remedies available under such writ where an employer decides to transfer her workplace on the basis of copies of an anonymous letter posted therein — imputing to her disloyalty to the company and calling for her to leave, which imputation it investigated but fails to inform her of the details thereof?

Rosario G. Lim (respondent), also known as Cherry Lim, is an administrative clerk at the Manila Electric Company (MERALCO).

On June 4, 2008, an anonymous letter was posted at the door of the Metering Office of the Administration building of MERALCO Plaridel, Bulacan Sector, at which respondent is assigned, denouncing respondent. The letter reads:

Cherry Lim:

MATAPOS MONG LAMUNIN LAHAT NG BIYAYA NG MERALCO, NGAYON NAMAN AY GUSTO MONG PALAMON ANG BUONG KUMPANYA SA MGA BUWAYA NG GOBYERNO. KAPAL NG MUKHA MO, LUMAYAS KA RITO, WALANG UTANG NA LOOB….[1]

Copies of the letter were also inserted in the lockers of MERALCO linesmen. Informed about it, respondent reported the matter on June 5, 2008 to the Plaridel Station of the Philippine National Police.[2]

By Memorandum[3] dated July 4, 2008, petitioner Alexander Deyto, Head of MERALCO's Human Resource Staffing, directed

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[1] *Id.* at 28.

[2] *Id.* at 30.

[3] Captioned "Management Initiated Transfer," *id.* at 33.

the transfer of respondent to MERALCO's Alabang Sector in Muntinlupa as "A/F OTMS Clerk," effective July 18, 2008 in light of the receipt of "… reports that there were accusations and threats directed against [her] from unknown individuals and which could possibly compromise [her] safety and security."

Respondent, by letter of July 10, 2008 addressed to petitioner Ruben A. Sapitula, Vice-President and Head of MERALCO's Human Resource Administration, appealed her transfer and requested for a dialogue so she could voice her concerns and misgivings on the matter, claiming that the "punitive" nature of the transfer amounted to a denial of due process. Citing the grueling travel from her residence in Pampanga to Alabang and back entails, and violation of the provisions on job security of their Collective Bargaining Agreement (CBA), respondent expressed her thoughts on the alleged threats to her security in this wise:

x x x x x x x x x

I feel that it would have been better . . . if you could have intimated to me the nature of the alleged accusations and threats so that at least I could have found out if these are credible or even serious. But as you stated, these came from unknown individuals and the way they were handled, it appears that the veracity of these accusations and threats to be [*sic*] highly **suspicious, doubtful** or are just **mere jokes** if they existed at all.

Assuming for the sake of argument only, that the alleged threats exist as the management apparently believe, then my transfer to an unfamiliar place and environment which will make me a "sitting duck" so to speak, seems to **betray the real intent of management** which is contrary to its expressed concern on my security and safety . . . Thus, it made me think twice on the rationale for management's initiated transfer. Reflecting further, it appears to me that instead of the management supposedly extending favor to me, the net result and effect of management action would be a **punitive one**.[4] (emphasis and underscoring supplied)

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[4] *Id.* at 40.

Respondent thus requested for the deferment of the implementation of her transfer pending resolution of the issues she raised.

No response to her request having been received, respondent filed a petition[5] for the issuance of a writ of *habeas data* against petitioners before the Regional Trial Court (RTC) of Bulacan, docketed as SP. Proc. No. 213-M-2008.

By respondent's allegation, petitioners' unlawful act and omission consisting of their continued failure and refusal to provide her with details or information about the alleged report which MERALCO purportedly received concerning threats to her safety and security amount to a violation of her right to privacy in life, liberty and security, correctible by *habeas data*. Respondent thus prayed for the issuance of a writ commanding petitioners to file a written return containing the following:

a) a full disclosure of the data or information about respondent in relation to the report purportedly received by petitioners on the alleged threat to her safety and security; the nature of such data and the purpose for its collection;

b) the measures taken by petitioners to ensure the confidentiality of such data or information; and

c) the currency and accuracy of such data or information obtained.

Additionally, respondent prayed for the issuance of a Temporary Restraining Order (TRO) enjoining petitioners from effecting her transfer to the MERALCO Alabang Sector.

By Order[6] of August 29, 2008, Branch 7 of the Bulacan RTC directed petitioners to file their verified written return. And by Order of September 5, 2008, the trial court granted respondent's application for a TRO.

Petitioners moved for the dismissal of the petition and recall of the TRO on the grounds that, *inter alia*, resort to a petition

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[5] *Id.* at 34-38.

[6] *Id.* at 43-44.

for writ of *habeas data* was not in order; and the RTC lacked jurisdiction over the case which properly belongs to the National Labor Relations Commission (NLRC).[7]

By Decision[8] of September 22, 2008, the trial court granted the prayers of respondent including the issuance of a writ of preliminary injunction directing petitioners to desist from implementing respondent's transfer until such time that petitioners comply with the disclosures required.

The trial court justified its ruling by declaring that, *inter alia*, recourse to a writ of *habeas data* should extend not only to victims of extra-legal killings and political activists but also to ordinary citizens, like respondent whose rights to life and security are jeopardized by petitioners' refusal to provide her with information or data on the reported threats to her person.

Hence, the present petition for review under Rule 45 of 1997 Rules of Civil Procedure and the Rule on the Writ of *Habeas Data*[9] contending that 1) the RTC lacked jurisdiction over the case and cannot restrain MERALCO's prerogative as employer to transfer the place of work of its employees, and 2) the issuance of the writ is outside the parameters expressly set forth in the Rule on the Writ of *Habeas Data*.[10]

Maintaining that the RTC has no jurisdiction over what they contend is clearly a labor dispute, petitioners argue that "although ingeniously crafted as a petition for *habeas data*, respondent is essentially questioning the transfer of her place of work by her employer"[11] and the terms and conditions of her employment which arise from an employer-employee relationship over which the NLRC and the Labor Arbiters under Article 217 of the Labor Code have jurisdiction.

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[7] *Vide* Omnibus Motion, *id.* at 60.

[8] Rendered by Judge Danilo Manalastas; *rollo,* pp. 20-27.

[9] A.M. No. 08-1-16-SC which took effect on February 2, 2008.

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

[11] *Id.* at 9.

Petitioners thus maintain that the RTC had no authority to restrain the implementation of the Memorandum transferring respondent's place of work which is purely a management prerogative, and that OCA-Circular No. 79-2003[12] expressly prohibits the issuance of TROs or injunctive writs in labor-related cases.

Petitioners go on to point out that the Rule on the Writ of *Habeas Data* directs the issuance of the writ only against public officials or employees, or private individuals or entities engaged in the gathering, collecting or storing of data or information regarding an aggrieved party's person, family or home; and that MERALCO (or its officers) is clearly not engaged in such activities.

The petition is impressed with merit.

Respondent's plea that she be spared from complying with MERALCO's Memorandum directing her reassignment to the Alabang Sector, under the guise of a quest for information or data allegedly in possession of petitioners, does not fall within the province of a writ of *habeas data*.

Section 1 of the Rule on the Writ of *Habeas Data* provides:

> Section 1. *Habeas Data*. — The writ of habeas data is a remedy available to any person whose **right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission** of a public official or employee or of a private individual or entity **engaged in the gathering, collecting or storing of data or information** regarding the person, family, home and correspondence of the aggrieved party. (emphasis and underscoring supplied)

The *habeas data* rule, in general, is designed to protect by means of judicial complaint the image, privacy, honor, information, and freedom of information of an individual. It is meant to provide a forum to enforce one's right to the truth and to

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[12] REMINDING JUDGES TO EXERCISE UTMOST CAUTION, PRUDENCE AND JUDICIOUSNESS IN ISSUANCE OF TEMPORARY RESTRAINING ORDERS AND WRITS OF PRELIMINARY INJUNCTIONS, promulgated on June 12, 2003.

informational privacy, thus safeguarding the constitutional guarantees of a person's right to life, liberty and security against abuse in this age of information technology.

It bears reiteration that like the writ of *amparo, habeas data* was conceived as a response, given the lack of effective and available remedies, to address the extraordinary rise in the number of killings and enforced disappearances. Its intent is to address violations of or threats to the rights to life, liberty or security as a remedy independently from those provided under prevailing Rules.[13]

Castillo v. Cruz[14] underscores the emphasis laid down in *Tapuz v. del Rosario*[15] that the writs of *amparo* and *habeas data* will NOT issue to protect purely property or commercial concerns nor when the grounds invoked in support of the petitions therefor are vague or doubtful.[16] Employment constitutes a property right under the context of the due process clause of the Constitution.[17] It is evident that respondent's reservations on the real reasons for her transfer — a legitimate concern respecting the terms and conditions of one's employment — are what prompted her to adopt the extraordinary remedy of *habeas data*. Jurisdiction over such concerns is inarguably lodged by law with the NLRC and the Labor Arbiters.

In another vein, there is no showing from the facts presented that petitioners committed any unjustifiable or unlawful violation of respondent's **right to privacy** *vis-a-vis* the right to life, liberty or security. To argue that petitioners' refusal to disclose the contents of reports allegedly received on the threats to

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[13] *Tapuz v. Del Rosario*, G.R. No. 182484, June 17, 2008, 554 SCRA 768, 784.

[14] G.R. No. 182165, November 25, 2009, 605 SCRA 628, 635.

[15] *Tapuz v. Del Rosario, supra*.

[16] *Castillo v. Cruz, supra*.

[17] *Romagos v. Metro Cebu Water District*, G.R. No. 156100, September 12, 2007, 533 SCRA 50, 60 citing *National Power Corporation v. Zozobrado*, G.R. No. 153022, April 10, 2006, 487 SCRA 16, 24.

respondent's safety amounts to a violation of her right to privacy is at best speculative. Respondent in fact trivializes these threats and accusations from unknown individuals in her earlier-quoted portion of her July 10, 2008 letter as "highly suspicious, doubtful or are just mere jokes if they existed at all."[18] And she even suspects that her transfer to another place of work "betray[s] the real intent of management]" and could be a "punitive move." Her posture unwittingly concedes that the issue is labor-related.

WHEREFORE, the petition is *GRANTED*. The assailed September 22, 2008 Decision of the Bulacan RTC, Branch 7 in SP. Proc. No. 213-M-2008 is hereby *REVERSED* and *SET ASIDE*. SP. Proc. No. 213-M-2008 is, accordingly, *DISMISSED*.

No costs.

SO ORDERED.

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

Brion, J., on official leave.

THIRD DIVISION

[A.M. No. MTJ-05-1580. October 6, 2010]
(Formerly OCA IPI No. 04-1608-MTJ)

LOURDES B. FERRER and PROSPERIDAD M. ARANDEZ, *complainants, vs.* **JUDGE ROMEO A. RABACA, Metropolitan Trial Court, Branch 25, Manila,** *respondent.*

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[18] *Vide* note 4.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; IMMEDIATE EXECUTION OF JUDGMENT; A JUDGE OF THE FIRST LEVEL COURT HAS A MINISTERIAL DUTY TO GRANT THE PLAINTIFF'S MOTION FOR IMMEDIATE EXECUTION UPON THE DEFENDANT'S FAILURE TO FILE THE SUFFICIENT SUPERSEDEAS BOND UNDER SECTION 19, RULE 70 OF THE RULES OF COURT; CASE AT BAR.— Indeed, respondent Judge should have granted the plaintiff's *motion for immediate execution* considering that the defendant did not file the sufficient supersedeas bond despite having appealed. Granting the plaintiff's *motion for immediate execution* became his ministerial duty upon the defendant's failure to file the sufficient supersedeas bond. Section 19, Rule 70, of the *Rules of Court* clearly imposes such duty x x x. Respondent Judge's excuse, that he had lost jurisdiction over the case by virtue of the defendant's appeal, was unacceptable in light of the clear and explicit text of the aforequoted rule. To begin with, the perfection of the appeal by the defendant did not forbid the favorable action on the plaintiff's *motion for immediate execution*. The execution of the decision could not be stayed by the mere taking of the appeal. Only the filing of the sufficient supersedeas bond and the deposit with the appellate court of the amount of rent due from time to time, coupled with the perfection of the appeal, could stay the execution. Secondly, he could not also credibly justify his omission to act according to the provision by claiming good faith or honest belief, or by asserting lack of malice or bad faith. A rule as clear and explicit as Section 19 could not be misread or misapplied, but should be implemented without evasion or hesitation. To us, good faith, or honest belief, or lack of malice, or lack of bad faith justifies a non-compliance only when there is an as-yet unsettled doubt on the meaning or applicability of a rule or legal provision. It was not so herein. And, thirdly, given that his court, being vested with original exclusive jurisdiction over cases similar to Civil Case No. 176394-CV, had been assigned many such cases, he was not a trial judge bereft of the pertinent prior experience to act on the issue of immediate execution, a fact that further exposed the abject inanity of his excuses.

2. JUDICIAL ETHICS; JUDGES; MAY BE RENDERED ADMINISTRATIVELY ACCOUNTABLE FOR FAILURE TO PERFORM A DUTY ENJOINED BY THE RULES OF COURT; CASE AT BAR.— We agree with the complainants' insistence, therefore, that respondent Judge's omission to apply Section 19 was inexcusable. He had ignored the urging to follow the clear and explicit provision of the rule made in the plaintiff's *motion for immediate execution*. Had he any genuine doubt about his authority to grant the *motion for immediate execution*, as he would have us believe, he could have easily and correctly resolved the doubt by a resort to the *Rules of Court*, which he well knew was the repository of the guidelines he was seeking for his judicial action. Neither was it relevant that he did not know any of the parties, or that he did not corruptly favor the defendant by his omission. His mere failure to perform a duty enjoined by the *Rules of Court* sufficed to render him administratively accountable.

3. ID.; ID.; JUDGES OF THE FIRST LEVEL COURTS SHOULD ADHERE ALWAYS TO THE MANDATE UNDER SECTION 19, RULE 70 OF THE RULES OF COURT.— This case is an opportune occasion to remind judges of the first level courts to adhere always to the mandate under Section 19, Rule 70, of the *Rules of Court* to issue writs of execution upon motion of the plaintiffs in actions for forcible entry or unlawful detainer when the defendant has appealed but has not filed a sufficient supersedeas bond. The summary nature of the special civil action under Rule 70 and the purpose underlying the mandate for an immediate execution, which is to prevent the plaintiffs from being further deprived of their rightful possession, should always be borne in mind.

4. ID.; ID.; IGNORANCE OF THE LAW; COMMITTED IN CASE AT BAR; PENALTY.— The recommended penalty of ₱5,000.00 with warning that a repetition of the same or similar act would be dealt with more severely is also correct. The Court Administrator rationalized the recommendation of the penalty thuswise: "Under A.M. No. 01-8-10-SC, 'Gross Ignorance of the Law or Procedure' is classified as serious offense for which the imposable penalty ranges from a fine to dismissal. However, we find respondent's acts not ingrained with malice or bad faith. It is a matter of public policy that in the absence of fraud, dishonesty or corrupt motive, the acts of a judge in his judicial

capacity are not subject to disciplinary action even though such acts are erroneous. In *Domingo vs. Judge Pagayatan, A.M. No. RTJ-03-1751, 10 June 2003*, the penalty of fine in the amount of five thousand pesos was deemed sufficient where it was held that respondent's lack of malice or bad faith frees him from administrative liability but not for gross ignorance of the law." We concur with the rationalization of the Court Administrator. Verily, even if respondent Judge's omission would have easily amounted to gross ignorance of the law and procedure, a serious offense under Section 8, Rule 140, of the *Rules of Court*, as amended, the fact that the complainants did not establish that malice or bad faith impelled his omission to act, or that fraud, dishonesty, or a corrupt motive attended his omission to act demands a downgrading of the liability. In the absence of any showing that he had been held guilty of any other administrative offense, and without our attention being called to other circumstances that might demonstrate respondent Judge's dark motives for his inaction, we should find and consider the recommended penalty of ₱5,000.00 with warning that a repetition of the same or similar act would be dealt with more severely to be commensurate to the offense.

APPEARANCES OF COUNSEL

Jose F. Saño for complainant.

D E C I S I O N

BERSAMIN, *J.*:

This administrative case charges Hon. Romeo A. Rabaca, then the Presiding Judge of Branch 25 of the Metropolitan Trial Court of Manila (MeTC), with ignorance of the law, disregard of the law, dereliction of duty, knowingly rendering an unjust interlocutory order, and violation of the *Code of Conduct for Government Officials*.

The complainants were the President and the Executive Director of the plaintiff in Civil Case No. 176394-CV of the MeTC, an ejectment suit entitled *Young Women's Christian Association, Inc. v. Conrado Cano*. After trial, Civil Case No. 176394-CV

was decided on June 22, 2004 by respondent Judge,[1] who disposed as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter as follows:
>
> (a) to vacate the premises located at Ground Floor, YMCA, 1144 Gen. Luna St., Ermita, Manila; and surrender possession thereof to plaintiff;
>
> (b) to pay plaintiff the sum of Php45,211.80 representing his arrears in rentals from February 2003 to July 2003 at Php7,535.30 a month plus the further sum of Php7,535.30 a month as reasonable value for the continued use and occupation of the premises starting August 2003 until the same is finally vacated and possession thereof is turn-over to plaintiff;
>
> (c) to pay the plaintiff the sum of Php20,000 as attorney's fees; and
>
> (d) to pay the costs of suit.
>
> SO ORDERED.

On July 12, 2004, the plaintiff's counsel filed a *motion for immediate execution,* praying that a writ of execution be issued "for the immediate execution of the aforesaid Judgment." The plaintiff cited Section 19, Rule 70 of the *Rules of Court* as basis for its motion.[2]

In his order dated July 14, 2004, however, respondent Judge denied the *motion for immediate execution*,[3] stating:

> A Notice of Appeal dated July 9, 2004, having been seasonably filed by counsel for the defendant, let the records of the above-captioned case be, as it is hereby ordered, elevated to the Regional Trial Court of Manila for appropriate proceedings and disposition.

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[1] *Rollo,* pp. 4-8

[2] *Id.,* pp. 9-10.

[3] *Id.,* p. 12-A.

In view thereof, no more action shall be taken on the Motion for Execution dated July 8, 2004 filed by the plaintiff thru counsel.

SO ORDERED.

According to the complainants, their counsel talked with respondent Judge about the matter. Allegedly, respondent Judge told their counsel that "if you think the court is wrong, file a motion for reconsideration." With that, the plaintiff filed a *motion for reconsideration*, which respondent Judge nonetheless denied in his order dated July 28, 2004,[4] thuswise:

Considering that the Court has already given due course to the appeal of the defendant which was perfected within the reglementary period, no more action will be taken on the Motion for Reconsideration dated July 19, 2004 filed by the plaintiff thru counsel.

The Branch Clerk of Court is hereby directed to immediately forward the records of this case to the Regional Trial Court, Manila.

SO ORDERED.

The complainants averred that respondent Judge's denial of their motions had rendered their victory inutile, and had unfairly deprived the plaintiff of the possession of the premises. They further averred that respondent Judge's refusal to perform an act mandated by the *Rules of Court* had given undue advantage to the defendant to the plaintiff's damage and prejudice.

The Court required respondent Judge to comment on the administrative complaint against him.

In his *comment* dated September 16, 2004,[5] respondent Judge denied the charges. He explained that he had honestly thought that his court had lost jurisdiction over the case pursuant to the provision of Section 9, Rule 41 of the *Rules of Court* (which provides that "in appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the

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

[5] *Id.*, pp. 18-21.

other parties") once he had given due course to the defendant's *notice of appeal.* He claimed that he had issued the orders in good faith and with no malice after a fair and impartial evaluation of the facts, applicable rules, and jurisprudence; and that if he had thereby committed lapses in the issuance of the orders, his doing so should be considered as error of judgment on his part.

He lastly insisted that he did not know personally the parties in Civil Case No. 176394-CV, and had absolutely no reason to give undue favor or advantage to the defendant; that the complainants did not submit evidence to show that the orders had been issued for a consideration, material or otherwise, or that his issuance of the orders had been motivated by ill-will or bad faith.

In their *reply* dated September 22, 2004,[6] the complainants contended that respondent Judge exhibited his ignorance of the law and procedure in relying on Section 9, Rule 41 of the *Rules of Court* which referred to appeals from the Regional Trial Court; that Rule 40, which contained provisions on appeal from the Municipal Trial Courts to the Regional Trial Courts, and which provided in its Section 4 that the perfection of the appeal and the effect of such perfection should be governed by the provisions of Section 9 of Rule 41, concerned appeals by notice of appeal in general; and that instead, the applicable rule should be Section 19, Rule 70 of the *Rules of Court*.

The complainants pointed out that respondent Judge apparently did not know that appeal in forcible entry and detainer cases was not perfected by the mere filing of a notice of appeal (as in ordinary actions) but by filing of a notice of appeal and a sufficient supersedeas bond approved by the trial judge executed to the plaintiff to pay the rents, damages and costs accruing down to the time of the judgment appealed from. They asserted that respondent Judge's invocation of good faith and error of judgment did not absolve him of liability, because he had grossly neglected his duties mandated by law by failing and refusing to act on their motion for immediate execution and motion for

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[6] *Id.,* pp. 28-35.

reconsideration and by giving due course to the appeal despite no supersedeas bond having been filed and approved by the trial court.

In his *memorandum* dated January 13, 2005,[7] then Court Administrator Presbitero J. Velasco, Jr., now Associate Justice of the Court, recommended that the administrative complaint against respondent Judge be re-docketed as a regular administrative matter; and that respondent Judge be fined in the amount of ₱5,000.00 with warning that a repetition of the same or similar act would be dealt with more severely, based on an evaluation of the charges, as follows:

> EVALUATION**:** We agree with the complainants that respondent erred when he did not act on complainants' motion for immediate execution.
>
> Section 19, Rule 70 of the 1997 Revised Rules on Civil Procedure provides:
>
> > "SEC. 19. If judgment is rendered against the defendant, execution *shall issue immediately* upon motion, *unless* an appeal has been perfected *and the defendant to stay execution files a supersedeas bond*, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. x x x x x x x x x."
>
> It is clear from the foregoing that the perfection of an appeal by itself is not sufficient to stay the execution of the judgment in an ejectment case. The losing party should likewise file a supersedeas bond executed in favor of the plaintiff to answer for rents, damages and costs, and, if the judgment of the court requires it, he should likewise deposit the amount of the rent before the appellate court from the time during the pendency of the appeal. *Otherwise, execution becomes ministerial and imperative*. (*Philippine Holding*

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[7] *Id.*, pp. 37-41.

Corporation vs. Valenzuela, 104 SCRA 401 as cited in Hualam Construction and Development Corporation vs. Court of Appeals, 214 SCRA 612, 626).

In the case at bar, defendant seasonably filed his Notice of Appeal dated 9 July 2004 on 13 July 2004; he however failed to file any supersedeas bond. *Prior* to the filing of such notice of appeal, more specifically on 12 July 2004, complainants have already filed their Motion for Execution dated 8 July 2004. Instead of acting on the Motion for Execution, respondent Judge Rabaca gave due course to the appeal in an Order dated 14 July 2004 and directed his Branch Clerk of Court to elevate the records of the case to the Regional Trial Court (RTC). The Branch Clerk of Court however failed to forward the records to the RTC. This fact is clear from Judge Rabaca's Order dated 28 July 2004 wherein he directed the Branch Clerk of Court to forward the records of the case to the Manila Regional Trial Court immediately.

From the foregoing, it is clear that when the complainant moved for the immediate execution of Judge Rabaca's decision, the latter still had jurisdiction over the case. He therefore clearly erred when he refused to act on the Motion for Execution. The relevant question that we should resolve however is whether such error is an error of judgment or an error amounting to incompetence that calls for administrative discipline.

Judge Rabaca claims that he refused to act on the complainant's Motion for execution because he honestly thought that when he gave due course to the defendant's appeal which was seasonably filed, and ordered the elevation of the records to the appellate court, his court already lost jurisdiction over the case.. In making his ruling, respondent asserts he relied on the provisions of Section 9, Rule 41 of the Rules of Court. This provision reads as follows:

> In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

He likewise allegedly relied on the ruling of the Court in *Administrative Matter OCA IPI No. 03-1513-MTJ: Susana Joaquin Vda. De Agregado vs. Judge Thelma Bunyi-Medina, MeTJ* wherein the Court said that—

> Respondent Judge is correct in saying that she had lost jurisdiction to entertain the motion for execution after the perfection of the appeal and after she issued an order to transmit the records of the case to the appellate court for review.

The facts of the case against Judge Bunyi-Medina are however different from those prevailing in the instant case. In the Medina case, the fifteen (15) day period within which to perfect the appeal had already lapsed before the complainant therein moved for the execution of the execution judgment. Clearly therefore, appeal had already been perfected. In the instant case, although the defendant had filed his appeal, the period to appeal had not yet lapsed since the plaintiff still had his own period to appeal from the judgment and such period had not yet lapsed. The provision relied upon by judge Rabaca, more specifically, Section 9, Rule 41 of the Rules of Court, clearly states that, "In appeals by notice of appeal, the court loses jurisdiction over the case upon perfection of the appeals filed on due time and the expiration of the time to appeal of the other parties." Moreover and more importantly, the herein complainants filed their Motion for Execution even before the defendant had filed his Notice of Appeal. Such motion was therefore still well within the jurisdiction of the lower court.

It is basic rule in ejectment cases that the execution of judgment in favor of the plaintiff is a matter of right and mandatory. This has been the consistent ruling of the Court in a number of cases involving the same issue posed before the respondent judge. Respondent Judge is expected to know this and his justification of erroneous application of the law, although mitigating, could not exculpate him from liability.

We agree with and adopt the evaluation of the Court Administrator.

Indeed, respondent Judge should have granted the plaintiff's *motion for immediate execution* considering that the defendant did not file the sufficient supersedeas bond despite having appealed. Granting the plaintiff's *motion for immediate execution* became his ministerial duty upon the defendant's failure to file the sufficient supersedeas bond. Section 19, Rule 70, of the *Rules of Court* clearly imposes such duty, *viz*:

Section 19. *Immediate execution of judgment; how to stay same.* — **If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court.** In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with the other papers, to the clerk of the Regional Trial Court to which the action is appealed.

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Respondent Judge's excuse, that he had lost jurisdiction over the case by virtue of the defendant's appeal, was unacceptable in light of the clear and explicit text of the aforequoted rule. To begin with, the perfection of the appeal by the defendant did not forbid the favorable action on the plaintiff's *motion for immediate execution*. The execution of the decision could not be stayed by the mere taking of the appeal. Only the filing of the sufficient supersedeas bond and the deposit with the appellate court of the amount of rent due from time to time, coupled with the perfection of the appeal, could stay the execution. Secondly, he could not also credibly justify his omission to act according to the provision by claiming good faith or honest belief, or by asserting lack of malice or bad faith. A rule as clear and explicit as Section 19 could not be misread or misapplied, but should be implemented without evasion or hesitation. To us, good faith, or honest belief, or lack of malice, or lack of bad faith justifies a non-compliance only when there is an as-yet unsettled doubt on the meaning or applicability of a rule or legal provision. It was not so herein. And, thirdly, given that his court, being vested with original exclusive jurisdiction over

cases similar to Civil Case No. 176394-CV, had been assigned many such cases, he was not a trial judge bereft of the pertinent prior experience to act on the issue of immediate execution, a fact that further exposed the abject inanity of his excuses.

We agree with the complainants' insistence, therefore, that respondent Judge's omission to apply Section 19 was inexcusable. He had ignored the urging to follow the clear and explicit provision of the rule made in the plaintiff's *motion for immediate execution.* Had he any genuine doubt about his authority to grant the *motion for immediate execution*, as he would have us believe, he could have easily and correctly resolved the doubt by a resort to the *Rules of Court*, which he well knew was the repository of the guidelines he was seeking for his judicial action. Neither was it relevant that he did not know any of the parties, or that he did not corruptly favor the defendant by his omission. His mere failure to perform a duty enjoined by the *Rules of Court* sufficed to render him administratively accountable.

This case is an opportune occasion to remind judges of the first level courts to adhere always to the mandate under Section 19, Rule 70, of the *Rules of Court* to issue writs of execution upon motion of the plaintiffs in actions for forcible entry or unlawful detainer when the defendant has appealed but has not filed a sufficient supersedeas bond. The summary nature of the special civil action under Rule 70 and the purpose underlying the mandate for an immediate execution, which is to prevent the plaintiffs from being further deprived of their rightful possession, should always be borne in mind.

The recommended penalty of ₱5,000.00 with warning that a repetition of the same or similar act would be dealt with more severely is also correct. The Court Administrator rationalized the recommendation of the penalty thuswise:

> Under A.M. No. 01-8-10-SC, 'Gross Ignorance of the Law or Procedure' is classified as serious offense for which the imposable penalty ranges from a fine to dismissal. However, we find respondent's acts not ingrained with malice or bad faith. It is a matter of public policy that in the absence of fraud, dishonesty or corrupt motive, the acts of a judge in his judicial capacity are not subject to

disciplinary action even though such acts are erroneous. In *Domingo vs. Judge Pagayatan, A.M. No. RTJ-03-1751, 10 June 2003*, the penalty of fine in the amount of five thousand pesos was deemed sufficient where it was held that respondent's lack of malice or bad faith frees him from administrative liability but not for gross ignorance of the law.

We concur with the rationalization of the Court Administrator. Verily, even if respondent Judge's omission would have easily amounted to gross ignorance of the law and procedure, a serious offense under Section 8,[8] Rule 140, of the *Rules of Court*, as amended, the fact that the complainants did not establish that malice or bad faith impelled his omission to act, or that fraud, dishonesty, or a corrupt motive attended his omission to act demands a downgrading of the liability. In the absence of any showing that he had been held guilty of any other administrative offense,[9] and without our attention being called to other circumstances that might demonstrate respondent Judge's dark motives for his inaction, we should find and consider the

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[8] Section. 8. *Serious charges.* — Serious charges include:

1. Bribery, direct or indirect;

2. Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);

3. Gross misconduct constituting violations of the Code of Judicial Conduct;

4. Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;

5. Conviction of a crime involving moral turpitude;

6. Willful failure to pay a just debt;

7. Borrowing money or property from lawyers and litigants in a case pending before the court;

8. Immorality;

9. **Gross ignorance of the law or procedure;**

10. Partisan political activities; and

11. Alcoholism and/or vicious habits.

[9] *Berin v. Barte*, A.M. No. MTJ-02-1443, July 31, 2002, 385 SCRA 527; *Esguerra v. Loja*, A.M. No. RTJ-00-1523, August 15, 2000, 338 SCRA 1; *Conducto v. Monzon*, A.M. No. MTJ-98-1147, July 2, 1998, 291 SCRA 619.

recommended penalty of ₱5,000.00 with warning that a repetition of the same or similar act would be dealt with more severely to be commensurate to the offense.[10]

WHEREFORE, we find respondent **JUDGE ROMEO A. RABACA**, Presiding Judge of Branch 25, Metropolitan Trial Court, in Manila guilty of ignorance of the law and procedure, and, accordingly, impose upon him a fine of ₱5,000.00 with warning that a repetition of the same or similar act would be dealt with more severely.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Villarama, Jr., and *Sereno, JJ.,* concur.

THIRD DIVISION

[A.M. No. MTJ-09-1738. October 6, 2010]
(Formerly OCA I.P.I. No. 08-2033-MTJ)

CIRILA S. RAYMUNDO, *complainant, vs.* **JUDGE TERESITO A. ANDOY, Municipal Trial Court (MTC), Cainta, Rizal,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULE ON SUMMARY PROCEDURE; REQUIRES THE COURT TO PROMULGATE A JUDGMENT NOT LATER THAN THIRTY DAYS AFTER TERMINATION OF TRIAL; MANDATED PERIOD OF TIME TO DECIDE CASES, VIOLATED IN CASE AT BAR.— We stress at the outset that the subject criminal cases – violation

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[10] See *Domingo v. Pagayatan*, A.M. No. RTJ-03-1751, June 10, 2003, 403 SCRA 381, 388-389.

of B.P. Blg. 22 — are indeed covered by the Rule on Summary Procedure pursuant to A.M. No. 00-11-01-SC (*Re: Amendment to the Rule on Summary Procedure of Criminal Cases*). The Rule on Summary Procedure was promulgated by the Supreme Court to achieve an expeditious and inexpensive disposition of cases. Section 17 of this Rule requires the court to promulgate a judgment *not later than thirty (30) days after termination of trial.* Trial in the present case originally ended on August 4, 2004. For reasons not stated in the records, the cases were again set for trial on November 17, 2004 and later moved to December 20, 2004. The MTC ordered the cases submitted for decision when the accused once again failed to appear in court on December 20, 2004. The MTC reconsidered this order and again set the case for hearing on October 12, 2005. The MTC ordered the testimony of the accused to be stricken off the record and declared the cases again submitted for decision when, again, she failed – despite due notice – to appear in court on October 12, 2005. From this sequence of events, we find it clear that the respondent judge failed to observe the mandated period of time to decide cases under the Rule on Summary Procedure. Following Section 17 of this Rule, he should have rendered a decision within 30 days from the termination of trial on August 4, 2004. Even assuming that the subsequent resettings of the cases for trial were valid, he should have rendered a decision within 30 days from October 12, 2005, or the date the cases were finally considered submitted for decision. His failure to meet this deadline is a patent indication that he did not take into account and had disregarded the Rule on Summary Procedure.

2. POLITICAL LAW; JUDICIAL DEPARTMENT; LOWER COURTS; CASES OR MATTERS FILED BEFORE ALL LOWER COURTS SHALL BE DECIDED OR RESOLVED WITHIN NINETY DAYS FROM THE TIME THE CASE IS SUBMITTED FOR DECISION.— The Constitution mandates that all cases or matters filed before all lower courts shall be decided or resolved within 90 days from the time the case is submitted for decision. Judges are enjoined to dispose of the court's business promptly and expeditiously and to decide cases within the period fixed by law. Failure to comply with the mandated period constitutes a serious violation of the constitutional right of the parties to a speedy disposition of

their cases — a lapse that undermines the people's faith and confidence in the judiciary, lowers its standards and brings it to disrepute. This constitutional policy is reiterated in Rule 3.05, Canon 3 of the Code of Judicial Conduct which requires a judge to dispose of the court's business promptly and decide cases within the required periods. x x x We cannot tolerate undue delay in the disposition of cases, given our all-out effort and frequent reminders to minimize, if not totally eradicate, the problem of congestion that has long plagued our courts. The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice, for obviously, justice delayed is justice denied.

3. LEGAL ETHICS; JUDGES; NEGLECT OF DUTY AND GROSS INEFFICIENCY; FAILURE TO DECIDE WITHIN THE REQUIRED PERIOD, A CASE OF.— In the present case, the subject cases had been submitted for decision since October 12, 2005. As correctly pointed out by the OCA, while the respondent judge attributed his failure to render a decision to the heavy caseload in his sala, he did not ask for an extension of time to decide the cases. This failure to decide within the required period, given that he could have asked for an extension, is inexcusable; it constitutes neglect of duty as well as gross inefficiency that collectively warrant administrative sanction.

4. ID.; ID.; UNDUE DELAY IN RENDERING A DECISION; CLASSIFIED AS A LESS SERIOUS OFFENSE; PENALTY.— Under Rule 140, Section 9(1), as amended by Administrative Matter No. 01-8-10-SC, the respondent judge's undue delay in rendering a decision is classified as a less serious offense. It carries the penalty of suspension from office without salary and other benefits for not less than one nor more than three months, *or* a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. Since the respondent judge had been previously found guilty in *Blanco v. Andoy*, of gross ignorance of procedure and undue delay in the resolution of a motion (for which he was imposed a ₱25,000.00 fine with a stern warning that a repetition of the same or similar act shall be dealt with more severely), we impose on him the maximum allowable fine of ₱20,000.00. This amount shall be deducted from respondent judge's retirement benefits as the record shows that he had already retired from the service on October 3, 2008.

APPEARANCES OF COUNSEL

M.B. Tomacruz & Associates Law Offices for complainant.

R E S O L U T I O N

BRION, *J.*:

We resolve in this Resolution the administrative complaint for violation of Rule 3.05, Canon 3[1] of the Code of Judicial Conduct filed by complainant Cirila S. Raymundo (*complainant*) against respondent Judge Teresito A. Andoy.

In her complaint-affidavit,[2] the complainant alleged that sometime in 2000, she filed six counts[3] of violation of *Batas Pambansa Bilang* 22 (*B.P. Blg. 22*) against Hermelinda Chang (*accused*) before the Municipal Trial Court (*MTC*) of Cainta, Rizal. The respondent judge presided over the court.

The trial of the cases ended on August 4, 2004 after the respondent judge declared[4] that the accused had waived her rights to present further evidence for repeated failure to appear in court despite due notice. On September 2, 2004, the complainant received a notice from the MTC, setting the cases for trial anew on November 17, 2004. The date was later moved to December 20, 2004.

On December 20, 2004, the accused and her counsel again failed to appear in court, prompting the private prosecutor to move for the reinstatement of the MTC's August 4, 2004 order. The respondent judge granted the motion and declared the cases submitted for decision.[5] The accused moved to reconsider this order; the MTC granted the motion in its order of February 9,

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[1] Rule 3.05 — A judge shall dispose of the court's business promptly and decide cases within the required periods.

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

[3] Docketed as Criminal Case Nos. 17681-17683 and 18083-18085.

[4] Annex "A", *rollo,* p. 4.

[5] Annex "B", *id.* at 5.

2005. Accordingly, the cases were again set for hearing on October 12, 2005.

On October 12, 2005, the accused and her counsel again failed to appear in court despite due notice. The MTC, thus, ordered the direct testimony of the accused to be stricken off the record, and again declared the cases submitted for decision.[6]

On June 23, 2006, the complainant filed with the MTC an *urgent ex parte motion to render decision*.[7] Almost two years later, or on March 12, 2008, the complainant filed a *second ex parte motion to render decision*.[8] The respondent judge did not act on these motions.

The Office of the Court Administrator (*OCA*) required the respondent judge to comment on the complaint. The respondent judge responded with the following explanation:

1. He had prepared his decision in the subject cases, dated July 19, 2008, and had set the same for promulgation on August 18, 2008, at 8:30 in the morning;
2. The only first level court in Cainta, Rizal, this Court has an average active caseload of 1,562 cases. An average of 87 new cases are filed each month. It hears cases daily, except Fridays.
3. Although the undersigned is aware that heavy caseload is not considered by the Supreme Court as an excuse for delay in rendering decisions, the undersigned humbly begs this Honorable Office's utmost consideration, understanding and compassion in evaluating the subject IPI. The undersigned is due to retire on October 3, 2008.[9]

The OCA, in its Report[10] dated February 5, 2009, made the following recommendations: (1) the instant case be re-docketed

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[6] Annex "D", *id.* at 7.

[7] Annex "E", *id.* at 8-10.

[8] Annex "F", *id.* at 11-13.

[9] *Id.* at 15.

[10] *Id.* at 17-20.

as a regular administrative matter; and (2) the respondent judge be found guilty of undue delay in rendering a decision, and a fine of ₱20,000.00 be imposed, to be deducted from his retirement benefits.

The OCA explained that while the Court is not unaware of the heavy caseload of judges, nothing in the records shows that the respondent judge asked for an extension of time to decide the subject criminal cases. In addition, the respondent judge failed to consider that the subject cases required a quicker resolution as they were covered by the Rule on Summary Procedure.

THE COURT'S RULING

After due consideration, we resolve to adopt the findings and recommendations of the OCA.

We stress at the outset that the subject criminal cases – violation of B.P. Blg. 22 — are indeed covered by the Rule on Summary Procedure pursuant to A.M. No. 00-11-01-SC (*Re: Amendment to the Rule on Summary Procedure of Criminal Cases*).

The Rule on Summary Procedure was promulgated by the Supreme Court to achieve an expeditious and inexpensive disposition of cases. Section 17 of this Rule requires the court to promulgate a judgment *not later than thirty (30) days after termination of trial*. Trial in the present case originally ended on August 4, 2004. For reasons not stated in the records, the cases were again set for trial on November 17, 2004 and later moved to December 20, 2004. The MTC ordered the cases submitted for decision when the accused once again failed to appear in court on December 20, 2004. The MTC reconsidered this order and again set the case for hearing on October 12, 2005. The MTC ordered the testimony of the accused to be stricken off the record and declared the cases again submitted for decision when, again, she failed — despite due notice — to appear in court on October 12, 2005.

From this sequence of events, we find it clear that the respondent judge failed to observe the mandated period of time

to decide cases under the Rule on Summary Procedure. Following Section 17 of this Rule, he should have rendered a decision within 30 days from the termination of trial on August 4, 2004. Even assuming that the subsequent resettings of the cases for trial were valid, he should have rendered a decision within 30 days from October 12, 2005, or the date the cases were finally considered submitted for decision. His failure to meet this deadline is a patent indication that he did not take into account and had disregarded the Rule on Summary Procedure.

At any rate, even if we adopt a liberal approach and consider the subject cases to be outside the coverage of the Rule on Summary Procedure, the respondent judge still cannot escape liability.

The Constitution mandates that all cases or matters filed before all lower courts shall be decided or resolved within 90 days from the time the case is submitted for decision.[11] Judges are enjoined to dispose of the court's business promptly and expeditiously and to decide cases within the period fixed by law. Failure to comply with the mandated period constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases — a lapse that undermines the people's faith and confidence in the judiciary, lowers its standards and brings it to disrepute.[12] This constitutional policy is reiterated in Rule 3.05, Canon 3 of the Code of Judicial Conduct which requires a judge to dispose of the court's business promptly and decide cases within the required periods.

In the present case, the subject cases had been submitted for decision since October 12, 2005. As correctly pointed out by the OCA, while the respondent judge attributed his failure to

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[11] Section 15(1), Article VIII: All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.

[12] *Salvador v. Limsiaco, Jr.*, A.M. No. MTJ-08-1695, 551 SCRA 373, 376.

render a decision to the heavy caseload in his sala, he did not ask for an extension of time to decide the cases. This failure to decide within the required period, given that he could have asked for an extension, is inexcusable; it constitutes neglect of duty as well as gross inefficiency that collectively warrant administrative sanction.

We cannot tolerate undue delay in the disposition of cases, given our all-out effort and frequent reminders to minimize, if not totally eradicate, the problem of congestion that has long plagued our courts. The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice, for obviously, justice delayed is justice denied.[13] As we explained in *Bontuyan v. Judge Villarin*:[14]

> This Court is not unmindful of the heavy dockets of lower courts. Thus, upon their proper application for extension, especially in meritorious case involving difficult questions of law or complex issues, it grants them additional time to decide beyond the reglementary period. In the instant case, however, no such application was filed by respondent. Had he done so and indicated the reason therefor, he would not have been subjected to disciplinary action.
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> "Judges are expected to observe utmost diligence and dedication in the performance of their judicial functions and the discharge of their duties. The failure or inability of a judge to decide a case within the period fixed by law subjects him to administrative sanctions." This is because undue delay in the disposition of cases contributes to the people's loss of faith and confidence in the judiciary and brings it into disrepute.

Under Rule 140, Section 9(1),[15] as amended by Administrative Matter No. 01-8-10-SC,[16] the respondent judge's undue delay

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[13] See *Prosecutor Visbal v. Judge Sescon*, A.M. No. RTJ-03-1744, August 18, 2003, 456 Phil. 552 (2003).

[14] 436 Phil. 560, 568-569 (2002).

[15] SEC. 9. *Less Serious Charges*. Less serious charges include:

> 1. Undue delay in rendering a decision or order, or in transmitting the records of a case[.]

[16] Re: Proposed Amendment to Rule 140 of the Rules of Court.

in rendering a decision is classified as a less serious offense. It carries the penalty of suspension from office without salary and other benefits for not less than one nor more than three months, *or* a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[17]

Since the respondent judge had been previously found guilty in *Blanco v. Andoy*,[18] of gross ignorance of procedure and undue delay in the resolution of a motion (for which he was imposed a ₱25,000.00 fine with a stern warning that a repetition of the same or similar act shall be dealt with more severely), we impose on him the maximum allowable fine of ₱20,000.00. This amount shall be deducted from respondent judge's retirement benefits as the record shows that he had already retired from the service on October 3, 2008.

WHEREFORE, in light of all the foregoing, Judge Teresito A. Andoy is hereby found *GUILTY* of (1) undue delay in rendering a decision and (2) violation of Canon 3, Rule 3.05 of the Code of Judicial Conduct. He is ordered to pay a *FINE* of twenty thousand pesos (₱20,000.00), to be deducted from his retirement benefits.

SO ORDERED.

Carpio Morales, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

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[17] SEC. 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.

[18] A.M. No. MTJ-08-1700, July 23, 2008, 559 SCRA 328.

THIRD DIVISION

[A.M. No. MTJ-10-1769. October 6, 2010]
(Formerly OCA IPI No. 09-2145-MTJ)

EDUARDO B. OLAGUER, *complainant, vs.* **JUDGE ALFREDO D. AMPUAN, Metropolitan Trial Court, Branch 33, Quezon City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; SC ADMINISTRATIVE CIRCULAR NO. 28; DUTY TO DECIDE CASE IN NINETY (90) DAYS.— Respondent Judge really failed in his duty to promptly and expeditiously dispose of Civil Case No. 27653. In so failing, he ran afoul of Supreme Court Administrative Circular No. 28 dated July 3, 1989, whose paragraph three provides: A case is considered submitted for decision upon the admission of the evidence of the parties at the termination of the trial. *The ninety (90) day period for deciding the case shall commence to run from submission of the case for decision without memoranda; in case the court requires or allows its filing, the case shall be considered submitted for decision upon the filing of the last memorandum or upon the expiration* of the period to do so, whichever is earlier. Lack of transcript of stenographic notes shall not be a valid reason to interrupt or suspend the period for deciding the case unless the case was previously heard by another judge not the deciding judge in which case the latter shall have the full period of ninety (90) days for the completion of the transcripts within which to decide the same.

2. ID.; ID.; ID.; ID.; ID.; VIOLATION THEREOF NOT EXCUSED BY ADDITIONAL COURT ASSIGNMENTS AS EXTENSION OF TIME TO DECIDE CASE CAN BE REQUESTED.— The additional court assignments or designations imposed upon respondent Judge did not make him less liable for the delay. Verily, a judge cannot by himself choose to prolong the period for deciding cases beyond that authorized by law. Had his additional court assignments or designations unduly prevented him from deciding Civil Case No. 27653, respondent Judge

could have easily sought additional time by requesting an extension from the Court, through the OCAd, but he did not avail himself of this remedy. Without an order of extension granted by the Court, his failure to decide within the required period constituted gross inefficiency that merited administrative sanction.

D E C I S I O N

BERSAMIN, *J.*:

Before us is an administrative complaint against Presiding Judge Alfredo D. Ampuan of Branch 33, Metropolitan Trial Court, in Quezon City.

The complainant charged respondent Judge with delay in rendering a decision, gross inefficiency, and conduct unbecoming of a judge relative to his handling of Civil Case No. 27653 entitled *JOS Managing Builders, Inc. v. Land Bank of the Philippines, et al*. The said civil case had been already pending for eight years because respondent Judge had allowed the case to drag unnecessarily. The complainant claimed that respondent had failed to render a decision despite the lapse of six months and had likewise failed to act on the last two motions he had filed. The complainant averred that the Branch Clerk of Court had informed him that the cause of delay had been the reconstruction of the various transcripts of stenographic notes (TSNs), which should not be true considering that the original TSNs had earlier been provided to the parties.[1]

It appears that on August 5, 2008, the complainant filed an *ex parte manifestation* in Civil Case No. 27653 praying for its submission for decision for failure of the defendants to file their memorandum, but respondent Judge rendered no decision despite the lapse of three months. The complainant then filed *motions to resolve* on December 12, 2008 and on February 18, 2009. Still, respondent Judge did not decide Civil Case No. 27653

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

until only on June 2, 2009, which was way beyond the three-month reglementary period.[2]

In his *comment*,[3] respondent Judge explained that he had inherited Civil Case No. 27653 from two predecessors, and that he had started handling it only on November 18, 2005, but only for the last five hearings. He averred that the stenographers who had taken the TSNs had transferred to another court, causing a delay in the submission of the TSNs; and that the charges against him were unfair, stressing that he conducted daily hearings because his *sala* was designated as a Special Court for Tax Cases, Election Court, and Small Claims Court.

On August 3, 2010, the Office of the Court Administrator (OCAd) found respondent Judge guilty of gross inefficiency and recommended the penalty of reprimand with a stern warning that a repetition of the same or similar act would be dealt with more severely.[4]

We agree with the finding and recommendation of the OCAd, which were supported by the uncontroverted records.

Respondent Judge really failed in his duty to promptly and expeditiously dispose of Civil Case No. 27653. In so failing, he ran afoul of Supreme Court Administrative Circular No. 28 dated July 3, 1989, whose paragraph three provides:

> A case is considered submitted for decision upon the admission of the evidence of the parties at the termination of the trial. **The ninety (90) day period for deciding the case shall commence to run from submission of the case for decision without memoranda; in case the court requires or allows its filing, the case shall be considered submitted for decision upon the filing of the last memorandum or upon the expiration** of the period to do so, whichever is earlier. Lack of transcript of stenographic notes shall not be a valid reason to interrupt or suspend the period for deciding the case unless the case was previously heard by another judge not

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

[3] *Id.*, p. 9.

[4] *Id.*, pp. 69-73.

the deciding judge in which case the latter shall have the full period of ninety (90) days for the completion of the transcripts within which to decide the same.

The respondent should have forthwith issued the order directing the stenographers to submit the TSNs after the complainant had manifested that the defendants had not filed their *memorandum*. Yet, he did not, but instead took more than seven months before issuing such order on March 15, 2009.

Moreover, we state that the additional court assignments or designations imposed upon respondent Judge did not make him less liable for the delay.[5] Verily, a judge cannot by himself choose to prolong the period for deciding cases beyond that authorized by law. Had his additional court assignments or designations unduly prevented him from deciding Civil Case No. 27653, respondent Judge could have easily sought additional time by requesting an extension from the Court, through the OCAd, but he did not avail himself of this remedy. Without an order of extension granted by the Court, his failure to decide within the required period constituted gross inefficiency that merited administrative sanction.[6]

Nevertheless, the Court recognizes that respondent judge inherited a total of 1,605 cases upon his assumption on August 10, 2005, and that the omission complained of is the first and only administrative charge against him. We are inclined to mitigate his liability, and opt to impose a reprimand, with stern warning that a repetition of the offense or the commission of a similar offense shall be dealt with more severely.

WHEREFORE, respondent Presiding Judge Alfredo D. Ampuan of Branch 33 of the Metropolitan Trial Court in Quezon City is reprimanded, with stern warning that a repetition of the

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[5] *Re: Judicial Audit of the RTC, Br. 14, Zamboanga City, Presided Over by Hon. Ernesto R. Gutierrez,* AM No. RTJ-05-1950-RTC, 482 SCRA 310, 323.

[6] *Reyes-Garmsen v. Bello, Jr.*, A.M. No. RTJ-04-1877, December 21, 2004, 447 SCRA 377, 382.

offense or the commission of a similar offense shall be dealt with more severely.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Villarama, Jr., and *Sereno, JJ.,* concur.

THIRD DIVISION

[A.M. No. P-10-2807. October 6, 2010]
(Formerly OCA I.P.I. No. 09-3242-P)

LEAVE DIVISION-OAS, OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **BETHEL I. ESELLER, Court Interpreter II, Municipal Trial Court in Cities, Branch III, Bacolod City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CSC MEMORANDUM CIRCULAR NO. 04; HABITUAL TARDINESS; POLICY REITERATED IN ADMINISTRATIVE CIRCULARS. — Under CSC Memorandum Circular No. 04, Series of 1991, an officer or employee of the civil service is considered habitually tardy if he incurs tardiness, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester, or for at least two (2) consecutive months. To ensure the Circular's observance, we circularized it on May 5, 1998, for the information and guidance of all court officials and employees. The Court reiterated the policy on absenteeism and tardiness with the issuance of Administrative Circular No. 2-99 which provides, among others, that Absenteeism and Tardiness, even if not "habitual" or "frequent" under CSC Memorandum Circular No. 04, Series of 1991, shall be dealt

with severely. We further reiterated the policy in Administrative Circular No. 14-2002.

2. ID.; ID.; ID.; ID.; NOT EXCUSED BY DOMESTIC CONCERNS. — In the string of cases the Court has passed upon, respondents have offered varied excuses for reporting late to office. We consistently ruled that non-office obligations, household chores, and domestic concerns are not sufficient reasons to excuse or justify habitual tardiness. Hence, Ms. Eseller's reasons for her tardiness — her need to attend to her children and her problems in the workplace — cannot exculpate her. The Court cannot turn a blind eye to these infractions as they seriously compromise efficiency and hamper the delivery of public service. By being habitually tardy, Ms. Eseller fell short of the stringent standard of conduct demanded from everyone connected with the administration of justice. We have repeatedly reminded officials and employees of the Judiciary that by reason of the nature and functions of their office, they must be role models in the faithful observance of the constitutional rule that public office is a public trust. They must strictly observe prescribed office hours and efficiently use every working moment, if only to give back in terms of efficient and dedicated service the true worth of what the Government and, ultimately, the people pay in maintaining the Judiciary. They must observe the virtue of punctuality and avoid impermissible tardiness.

3. ID.; ID.; CSC MEMORANDUM CIRCULAR NO. 19; HABITUAL TARDINESS; PENALTY. — Under Section 52(c)(4), Rule VI of CSC Memorandum Circular No. 19, Series of 1999, habitual tardiness is penalized as follows: first offense, reprimand; second offense, suspension for 1 to 30 days; and third offense, dismissal from the service.

R E S O L U T I O N

BRION, *J.*:

We resolve the present administrative matter involving the reported habitual tardiness of Bethel I. Eseller, Court Interpreter II, Municipal Trial Court in Cities (*MTCC*), Branch 3, Bacolod City.

A Report of Tardiness[1] submitted by the Leave Division of the Office of the Court Administrator (*OCA*) shows Ms. Eseller's record of tardiness as follows: for the year 2008, eighteen (18) times in October and sixteen (16) times in November; and for the year 2009, fifteen (15) times in March, ten (10) times in April and fourteen (14) times in May. Prior to these infractions, the Court, in *Leave Division–OAS, OCA v. Bethel I. Eseller, Interpreter II, MTCC, Branch 3, Bacolod City*,[2] already reprimanded Ms. Eseller for habitual tardiness.

In an indorsement dated September 24, 2009, then Court Administrator Jose P. Perez required Ms. Eseller to comment on the report submitted by the OCA. Ms. Eseller admitted her shortcomings in her compliance,[3] but attributed her frequent tardiness to her role as a working mother and sole breadwinner of the family, with a jobless husband and four minor children to attend to. She claimed that her predicament was aggravated by personal conflicts and antagonisms at her workplace, particularly with the branch clerk of court who repeatedly subjected her to criticism, abuse, and discrimination. She earnestly apologized for her infractions.

Court Administrator Jose Midas P. Marquez evaluated Ms. Eseller's explanation and found no justification for her habitual tardiness. He recommended (1) that the instant case be re-docketed as a regular administrative matter, and (2) that Ms. Eseller be suspended for fifteen (15) days without pay.

THE COURT'S RULING

We agree with the Court Administrator's findings, but differ with the recommended penalty.

Under CSC Memorandum Circular No. 04, Series of 1991, an officer or employee of the civil service is considered habitually

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[1] Dated August 12, 2009.

[2] A.M. No. P-09-2640 (formerly A.M. OCA I.P.I. No. 08-3006-P).

[3] Dated October 26, 2009.

tardy if he incurs tardiness, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester, or for at least two (2) consecutive months.[4] To ensure the Circular's observance, we circularized it on May 5, 1998, for the information and guidance of all court officials and employees.

The Court reiterated the policy on absenteeism and tardiness with the issuance of Administrative Circular No. 2-99[5] which provides, among others, that Absenteeism and Tardiness, even if not "habitual" or "frequent" under CSC Memorandum Circular No. 04, Series of 1991, shall be dealt with severely. We further reiterated the policy in Administrative Circular No. 14-2002.[6]

In the string of cases the Court has passed upon, respondents have offered varied excuses for reporting late to office. We consistently ruled that non-office obligations, household chores, and domestic concerns are not sufficient reasons to excuse or justify habitual tardiness.[7] Hence, Ms. Eseller's reasons for her tardiness — her need to attend to her children and her problems in the workplace — cannot exculpate her. The Court cannot turn a blind eye to these infractions as they seriously compromise efficiency and hamper the delivery of public service. By being habitually tardy, Ms. Eseller fell short of the stringent standard of conduct demanded from everyone connected with the administration of justice.[8]

We have repeatedly reminded officials and employees of the Judiciary that by reason of the nature and functions of their office, they must be role models in the faithful observance of

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[4] *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the Second Semester of 2002*, A.M. No. 00-6-09-SC, August 14, 2003, 409 SCRA 1, 8.

[5] Dated February 15, 1999.

[6] Dated March 18, 2002.

[7] *Supra* note 6, citing *Re: Imposition of Corresponding Penalties on Employees of this Court for Habitual Tardiness Committed During the Second Semester of 2000*, 393 SCRA 9 (2002).

[8] *Ibid*.

the constitutional rule that public office is a public trust.[9] They must strictly observe prescribed office hours and efficiently use every working moment, if only to give back in terms of efficient and dedicated service the true worth of what the Government and, ultimately, the people pay in maintaining the Judiciary.[10] They must observe the virtue of punctuality and avoid impermissible tardiness.[11]

Under Section 52(c)(4), Rule VI of CSC Memorandum Circular No. 19, Series of 1999, habitual tardiness is penalized as follows: first offense, reprimand; second offense, suspension for 1 to 30 days; and third offense, dismissal from the service. Ms. Eseller's infraction is a second offense for which the penalty of thirty (30) days suspension is merited.

WHEREFORE, we find respondent Bethel I. Eseller, Court Interpreter II, Municipal Trial Court in Cities, Branch 3, Bacolod City, *GUILTY* of habitual tardiness. This being Ms. Eseller's second offense, she is hereby *SUSPENDED* for thirty (30) days without pay, with a stern warning that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Carpio Morales, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

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[9] 1987 Constitution, Article XI, Section 1; *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the Second Semester of 2002, supra* note 4.

[10] *Ibid.*

[11] *Ibid.*

FIRST DIVISION

[G.R. No. 152866. October 6, 2010]

THE HEIRS OF ROMANA SAVES, namely: FIDELA ALMAIDA, EMILIANO ALMAIDA, JESUS ALMAIDA, CATALINA ALMAIDA, ALFREDO RAMOS, GINA RAMOS, LUZ ALMAIDA, ANITA ALMAIDA, PETRA GENERAL, EDNA GENERAL, ESTHER ALMAIDA, DIONISIA ALMAIDA, CORNELIA ALMAIDA, FELIMON ALMAIDA (represented by SINFROSA ALMAIDA); THE HEIRS OF RAFAELA SAVES, namely: JULIANA DIZON, HILARIA DIZON, JOVENCIO DIZON, MAURA DIZON, BABY DIZON & ULDARICO AMISTOSO (represented by ULDARICO AMISTOSO); THE HEIRS OF JANUARIA SAVES, namely: FELICIDAD MARTINEZ, MARLOU MARTINEZ, ROWENA MARTINEZ, BABY LOU MARTINEZ, BOBERT MARTINEZ, JERRY MARTINEZ (represented by FELICIDAD MARTINEZ); THE HEIRS OF MAXIMO SAVES, namely: ELPIDIO AMIGO, CELESTINA DEMETRIA AMIGO, MEREN (daughter of SEVERA SAVES), FRUTO ROSARIO (represented by ELPIDIO AMIGO); THE HEIRS OF BENEDICTA SAVES, namely: AUTEMIA JUCOM, CATALINA JUCOM, DOLORES JUCOM, SERGIA JUCOM, BENEDICTA JUCOM, JOSEFINA JUCOM, FLORDIVIDA REMETILLO, FELINA REMETILLO and ANNA MARIE REMETILLO, (represented by AUTEMIA JUCOM), *petitioners, vs.* **THE HEIRS OF ESCOLASTICO SAVES, namely: REMEDIOS SAVES-ADAMOS, LUZ SAVES-HERNANDEZ and DODONG SAVES, and ENRIQUETA CHAVES-ABELLA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; OFFER OF EVIDENCE; SIGNIFICANCE.— It is a basic procedural rule that the court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.

2. ID.; ID.; ID.; LIBERAL APPLICATION OF THE RULE.— [I]n *People v. Napat-a*, citing *People v. Mate*, we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, *viz*: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.

3. ID.; ID.; WHAT NEED NOT BE PROVED; JUDICIAL ADMISSIONS.— It is likewise worth emphasizing that under the Revised Rules on Evidence, an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof — such admission may be contradicted only by showing that it is made through palpable mistake or that no such admission was made.

4. CIVIL LAW; LAND TITLES; RELIANCE THEREOF.— It is a well-settled doctrine that one who deals with property registered under the Torrens system need not go beyond the same, but only has to rely on the certificates of title. He is charged with notice only of such burdens and claims as are annotated on the certificates.

5. ID.; SPECIAL CONTRACTS; SALES; BUYER OF REAL PROPERTY IN POSSESSION OF PERSONS OTHER THAN

THE SELLER MUST BE WARY.— [T]here is no cogent reason or legal compulsion for respondent Abella to inquire beyond Valencia's title over the property at issue since the latter had been in possession of Lot No. 382 prior to the sale. Settled is the rule that a buyer of real property in possession of persons other than the seller must be wary and should investigate the rights of those in possession, for without such inquiry the buyer can hardly be regarded as a buyer in good faith and cannot have any right over the property.

6. **ID.; ID.; ID.; PURCHASER IN GOOD FAITH.—** A purchaser in good faith is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before he has notice of the adverse claims and interest of another person in the same property.

7. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; ESTOPPEL BY LACHES; DEFINED.—** Laches is defined as the failure to assert a right for an unreasonable and unexplained length of time, warranting a presumption that the party entitled to assert it has either abandoned or declined to assert it. In the case at bar, plaintiffs, assuming that they or their predecessors-in-interest had rights over the land in question, obviously neglected to exercise these rights by failing to assert any adverse claim over the property or demand any share of its fruits for many years. x x x [T]he evidence presented by both parties, as found by the Court of Appeals, would lean towards the conclusion that petitioners' inaction for the past so many years belies any present conviction on their part that they have any existing interest over the property at all. Thus, even if we grant that petitioners are co-owners of the property at issue, it is only fair and reasonable for this Court to apply the equitable principle of estoppel by laches against them in order to avoid an injustice to respondent Abella who is the innocent purchaser for value in this case.

APPEARANCES OF COUNSEL

Enrique S. Empleo for petitioners.
Elam Law Offices for Enriqueta Chaves-Abella.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court from the Decision[1] promulgated on June 28, 2001 by the Court of Appeals, in CA-G.R. CV No. 51058, entitled "*The Heirs of Romana Saves, et al. v. The Heirs of Escolastico Saves, et al.*," reversing the Decision[2] dated May 23, 1995 of the Regional Trial Court (RTC) of Dumaguete City, Branch 39 in Civil Case No. 7678, in favor of the petitioners.

The facts of this case as narrated in the assailed Court of Appeals' Decision are as follows:

> Sometime on January 1921, several persons filed their respective claims before the then, Court of First Instance of the province of Oriental Negros for the titling of the respective lots they occupy, among them were Severo Chaves and Benedicta Chaves, who filed their claim for Lot No. 382, to be titled in their names, together with Escolastico Saves, Maximo Saves, Romana Saves, Rafaela Saves, and Januaria Saves, in Cadastral Case No. 15.
>
> On April 22, 1921, a Decision was rendered by the court, adjudicating several parcels of land to different claimants, among the lots adjudicated, were as follows:
>
> 1. *Lote No. 382 – Se adjudica pro indiviso y en partes iguales a los hermanos Benedicta Saves, Escolastico Saves, Romana Saves, finado Rafaela Saves, Januaria Saves y Maximo Saves finado en la proindiviso de una sixta parte cada uno. La parte que corresponde a los difuntos Romana Saves y Maximo Saves perteneceran a sus hijos respectivos*;
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> 2. *Lote No. 383 – Se adjudica con las mejores existentes en el a la acciedad conyugal formada por Escolastico Saves y Gaudencia Valencia*;

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[1] *Rollo*, pp. 17-25; penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Presbitero J. Velasco, Jr. (now a member of this Court) and Bienvenido L. Reyes, concurring.

[2] *Id.* at 26-39.

3. *Lote No. 386 – Se adjudica con las mejoras ixistentes en el a la acciedad conyugal formada por Escolastico Saves y Gaudencia Valencia*;

Also on April 22, 1921, Decree No. 177831 was issued by the United States of America for the Court of First Instance of the Province of Negros ordering the registration of Lot No. 382 in the names of Benedicta Saves, Escolastica Saves, the sons of Romana Saves, deceased, Rafaela Saves, Januaria Saves, and the sons of Maximo Saves, deceased.

Thereafter, Severo Saves died intestate, leaving his wife, Teresa Ramirez, his four (4) surviving children, and the heirs of his two children who predeceased him.

On June 21, 1941, Adelaida S. Martinez and Felicidad S. Martinez, who were the heirs of Januaria Saves, who predeceased them, sold their 1/6 share in Lot No. 382 to a certain Gaudencia Valencia evidenced by a public instrument, with Doc. No. 1029, Page 46, Book IV, Series of 1941, of the notarial register, per allegation in a Motion for the Issuance of Transfer Certificate of Title, filed by Gaudencia Valencia.

On June 30, 1941, a Deed of Sale was executed by the heirs of Romana Saves, namely: Sinforosa Alimayda, Juan Alimayda, Vicente Alimayda, Felimon Alimayda and Porferia Alimayda; the sole heir of Rafaela Saves, Pablo Saves Dizon; and the sole heir of Escolastico Saves, Teodoro Saves, their respective 1/6 share in Lot No. 382, or 3/6 of the property, to Gaudencia Valencia.

On June 6, 1947, Benedicta Saves and Marcela Saves, the sole heir of Maximo Saves, sold their respective 1/6 share in Lot No. 382, also to Gaudencia Valencia, or 2/6 of the property, as embodied in a Deed of Absolute Sale.

Considering that all the 1/6 share, rights, and participation of each co-owner in Lot No. 382 were already sold to Gaudencia Valencia, she initiated the titling of the said property under her name in a Motion for Issuance of Transfer Certificate of Title before the Court of First Instance of Negros Oriental. Subsequently, Transfer Certificate of Title No. 148 was issued by the Register of Deeds for Negros Oriental in the name of Gaudencia Valencia.

Sometime in 1961, Gaudencia Valencia sold the entire property to Enriqueta Chavez Abella, and Transfer Certificate of Title

No. 110 was issued in the name of Enriqueta Chavez, who was married to Charles Abella.

In 1979, Meleriana Saves, who was then residing in Cebu, wrote her relatives in Negros Oriental, the herein appellees, asking them to verify from the Register of Deeds information pertaining to Lot 382, as they were among the heirs entitled to said property.

On March 17, 1981, a case for Reconveyance, Partition, and Damages was filed before the Regional Trial Court of Negros Oriental by plaintiffs-appellees, alleging, *inter alia*, that Lot No. 382 was fraudulently acquired by Gaudencia Valencia, and that Gaudencia Valencia fictitiously sold the lot to her grandchild Enriqueta Chaves Abella.

The complaint was amended twice by plaintiffs considering that the original plaintiffs and defendants were all deceased.

The parties failed to arrive to an amicable settlement during the pre-trial stage, but have agreed to exclude Lot 386 in the litigation and limited the issues as to the ownership of lots 382 and 383, thus, trial ensued.[3] (Citations omitted.)

The trial court rendered a Decision in favor of the petitioners, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing considerations, judgment is rendered —
>
> 1. Dismissing defendants' counterclaim;
>
> 2. Declaring the Deed of Sale and Deed of Absolute Sale null and void *ab initio*; and being derived from a polluted source, whatever documents Gaudencia Valencia executed in favor of defendant Enriquita Chavez Abella in relation to Lot No. 382, Dumaguete Cadastre and the issuance of TCT No. 110 covering said lot, suffers the same legal infirmity that of a total nullity;
>
> 3. Ordering defendant Enriquita Chavez Abella to convey and deliver unto the plaintiffs their shares of Lot No. 382, Dumaguete Cadastre in the proportion of their respective rights and interests thereto which they are entitled to

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[3] *Id.* at 19-21.

participate and succeed from the shares of their predecessors-in-interest who are the original registered owners of the aforesaid lot; and after which, the parties are ordered to effect physical division and partition of the lot in question to avoid further animosity between and among themselves;

4. Ordering defendant Enriquita Chavez Abella to pay plaintiffs ₱6,000.00 as litigation expenses and ₱2,500.00 as plaintiff's counsel court appearances as well as moral damages in the sum of ₱120,000.00;

5. Dismissing plaintiff's claim of Lot No. 383, Dumaguete Cadastre, for lack of merit, the same is originally titled in the name of Escolastico Saves, married to Gaudencia Valencia; and

6. Defendant Enriquita Chavez Abella is ordered to pay the costs.[4] (Citations omitted.)

Respondents appealed the RTC Decision to the Court of Appeals which reversed and set aside the same in the herein assailed Court of Appeals Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the Decision dated, May 23, 1995 rendered by the Regional Trial Court of Negros Oriental, Branch 39, is hereby REVERSED and SET ASIDE, and a new one entered, declaring Transfer Certificate of Title No. 110 in the name of Enriqueta Chaves Abella as valid and subsisting, and the complaint filed by the plaintiffs is DISMISSED for lack of merit.[5]

Petitioners filed a Motion for Reconsideration but this was denied by the Court of Appeals in a Resolution[6] promulgated on March 7, 2002, the dispositive portion of which reads:

WHEREFORE, the foregoing premises considered, the Motion for Reconsideration is DENIED for lack of merit.[7]

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[4] *Id.* at 38-39.

[5] *Id.* at 25.

[6] *Id.* at 40-42.

[7] *Id.* at 42.

Unperturbed by the adverse Court of Appeals Decision, petitioners come before this Court and raise the following issues:

(a) Can the Court of Appeals, in the exercise of its appellate jurisdiction, consider as evidence exhibits not formally offered as such by the defendants (now respondents) in the trial court?

(b) Are exhibits (Exhibits "7", "8" and "13") not formally offered as evidence by the defendants in the trial court subject to judicial notice by the Court of Appeals for the purpose of utilizing the same as basis for the reversal of the trial court's decision?

(c) Is it legally correct to consider a rule of evidence simply as a rule of procedure? x x x.[8]

Petitioners also put into issue the failure of the Court of Appeals to consider respondent Enriquita Chaves-Abella (hereinafter "Abella") a purchaser and registrant in bad faith[9] and the reasonableness of its declaration that, even if petitioners are indeed co-owners of Lot No. 382, they are already barred due to the equitable principle of estoppel by laches in asserting their rights over the same.[10]

We find the instant petition to be without merit.

The first three issues propounded by petitioners can be summed up into the question of whether or not the Court of Appeals can consider evidence not formally offered in the trial court as basis for the herein assailed Court of Appeals ruling.

Petitioners draw attention to the fact that respondents did not formally offer Exhibits "7", "8" and "13" at the trial court proceedings. In accordance with Section 34, Rule 132 of the Revised Rules of Court,[11] the trial court did not consider them as evidence. Despite this, the Court of Appeals allegedly utilized

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[8] *Id.* at 92.

[9] *Id.* at 93.

[10] *Id.* at 102.

[11] *Offer of Evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

the same as basis for reversing and setting aside the trial court's decision.

It is a basic procedural rule that the court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.[12] A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.[13]

However, in *People v. Napat-a*,[14] citing *People v. Mate*,[15] we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, *viz*: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.[16]

In the case at bar, the records would show that the above requisites have been satisfactorily complied with respect to Exhibit "7".

With regard to Exhibit "7", which is a document entitled "*Motion for the Issuance of Transfer Certificate of Title*" filed by Gaudencia Valencia (hereinafter "Valencia") in the same trial court that led to the issuance of Transfer Certificate of

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[12] Sec. 34, Rule 132, Revised Rules of Court.

[13] *Heirs of Pedro Pasag v. Parocha*, G.R. No. 155483, April 27, 2007, 522 SCRA 410, 416.

[14] G.R. No. 84951, November 14, 1989, 179 SCRA 403.

[15] 191 Phil. 72 (1981).

[16] *Mato Vda. de Oñate v. Court of Appeals*, 320 Phil. 344, 350 (1995).

Title (TCT) No. 148, the records would show that it is the same document that petitioners' witness Fruto Rosario identified in his March 5, 1984 testimony and marked as petitioner-plaintiffs' Exhibit "I". He testified as follows:

Empleo — Here is another document, Mr. Rosario, which appears to be a motion for issuance of transfer certificate of title, dated March 9, 1948, in 3 pages. Will you please go over this certified true copy of the motion in Cad. Case No. 1, GLRO Rec. No. 140, Lot 382, and find out if these are among the documents which you have obtained in connection with your verification?

A — Yes, this is the one, these are among the documents.

Empleo — We request that this certified true copy of the motion for issuance of transfer certificate of title in Cad. Case No. 1, GLRO Rec. No. 140, Lot 382, be marked as Exhibit "I" for page one; "I-1" for page two and "I-2" for page 3.

Appearing on Exh. I is a third paragraph, which states, "that Maximo Saves, owner of 1/6 of Lot 382 is now dead, upon his death Marcela Saves is the only heiress and successor of his rights and interest in and over 1/6 portion of said lot." Do you understand that?

A — Yes, Sir.

Q — Is it true that Maximo Saves left only one heir named Marcela Saves?

A — No, Sir, it is not true.

Q — Why is it not true?

A — Because Maximo had two children, Sir.

Empleo — We request that paragraph 3 be marked as Exhibit "I-3".

Court (to witness): Who died ahead Severa or Maximo?

A — Maximo, Sir.

Court	Who died ahead Marcela or Severa?
A	Severa.
Court	Did Severa die before 1948?
A	No, Sir, because she died before the war; she died in 1940.
Court	So, when this motion for issuance of certificate of title was filed on March 10, 1948, Severa had already died?
A	Yes, Sir.
Court	And when this motion was filed on March 10, 1948, Marcela was still alive?
A	Yes.
Court	That is why the motion and which resulted to a certificate of title had only claim Marcela as a surviving heir of Maximo?
A	That is not so, Sir, because what about us the children of Severa?
Court	ORDER The hour of noon having come, continuance of the direct examination of fifth plaintiffs' witness Fruto Rosario, as already scheduled, will be done tomorrow at 10:30 a.m.[17]

Verily, Exhibit "7" was incorporated and made part of the records of this case as a common exhibit of the parties.[18] That only plaintiffs were able to formally offer the said motion as Exhibit "I" most certainly does not mean that it can only be considered by the courts for the evidentiary purpose offered by plaintiffs. It is well within the discretion of the courts to determine whether an exhibit indeed serves the probative purpose for which it is offered.

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[17] TSN, May 28, 1985, pp. 17-20.

[18] Records, pp. 168-170.

Likewise, Exhibit "13", which is TCT No. 110[19] or the Torrens title that was issued to respondent Abella after she bought Lot No. 382 from Valencia, complies with the requirements enunciated in *Napat-a* and *Mate*.

The records of the case bear out that Exhibit "13" was identified by respondent Abella during the continuation of her direct examination on March 15, 1988. This much was noted even by the trial court in its Decision dated May 23, 1995, to wit:

> During the continuation of the direct examination, witness Enriquita Chavez Abella **testified and identified** the TCT No. 110 of Lot No. 382 registered in the name of Enriquita Chavez which priorly reserved and now marked Exh. "13". x x x.[20] (Emphasis supplied.)

Moreover, it cannot be denied that Exhibit "13" was included in the records that was elevated to the Court of Appeals.[21] In fact, the Court of Appeals correctly noted Abella's testimony regarding this document in resolving petitioners' motion for reconsideration.[22]

It is likewise worth emphasizing that under the Revised Rules on Evidence, an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof — such admission may be contradicted only by showing that it is made through palpable mistake or that no such admission was made.[23]

The existence of Exhibit "13" was not only known to petitioners but it was expressly alleged in their Appellees' Brief[24] filed

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[19] *Id.* at 210.

[20] *Id.* at 275; *see* also TSN, March 15, 1988, pp. 16-17.

[21] Records, p. 210.

[22] *Rollo*, p. 42.

[23] *Capangpangan v. People*, G.R. No. 150251, November 23, 2007, 538 SCRA 279, 289, citing Sec. 4, Rule 129, Revised Rules of Court.

[24] CA *rollo*, p. 69.

with the Court of Appeals and their Petition for Review[25] filed with this Court that Lot No. 382 is registered in the name of respondent Abella.

Indeed, petitioners did not merely acknowledge the existence of TCT No. 110 (respondents' Exhibit "13"), but in fact relied upon it in order to put forward their main theory that the sale from Valencia to respondent Abella is fictitious or void because, according to petitioners, it appears from the said title that respondent Abella was supposedly only nine years old at the time of the transaction. Verily, it is inconsistent for petitioners to claim that Exhibit "13" proves its theory and in the same breath assail it as inadmissible.

Lastly, petitioners' present objection to Exhibit "8" hardly deserves any credit. Exhibit "8" is a rather innocuous document which has no bearing on any of the significant issues in this case. Its existence was only referred to in the second paragraph of page 7 of the RTC Decision wherein it is identified as an "Order of the Hon. Court dated May 11, 1948."[26] Though it never formed part of the records of this case upon appeal, a careful perusal of the assailed Court of Appeals' Decision would reveal that Exhibit "8" was not in any way used or referred to by the Court of Appeals in arriving at the aforementioned ruling.

Anent the issue of whether or not the Court of Appeals erred in failing to consider that respondent Abella is a purchaser in bad faith, petitioner insists that "for failing to exercise prudent (sic) and caution in buying the property in question,"[27] respondent Abella is a buyer in bad faith. She did not investigate closely the basis of the ownership of Gaudencia Valencia, her grandmother, over Lot No. 382 which a buyer in good faith should have done under the circumstances. She did not even bother to know the persons from whom her grandmother acquired the parcel in question.[28]

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[25] *Rollo*, p. 9.

[26] *Id.* at 32.

[27] *Id.* at 101.

[28] TSN, March 15, 1988, p. 10.

Respondents argue that the issue of good faith or bad faith of Enriquita Chaves-Abella was not raised in the Complaint filed by petitioners in the RTC. Petitioners' original theory of the case is that the sale by Gaudencia Valencia to Enriquita Chaves-Abella was fictitious because the latter was only nine years old at the time of the sale. However, during trial, it was clearly established by common evidence that Enriquita was already married to Charles Abella when she bought the lot in 1961, and, as a matter of fact, the purchase money was provided by her husband, Charles. Confronted with the above situation which completely destroyed their theory of the case, petitioners switched from their "fictitious sale to a 9-year old" theory to an entirely different theory, to wit: that Enriquita Chaves-Abella is a purchaser in bad faith.[29]

Despite this, the RTC declared that respondent Abella is a purchaser in bad faith because "[s]he did not investigated (sic) closely the basis of the ownership of Gaudencia Valencia over Lot No. 382 which a buyer in good faith should have done under the circumstances."[30]

The Court of Appeals reversed the above finding and ruled that respondent Abella is an innocent purchaser for value and in good faith because the "[r]ecords reveal that appellant derived her title of Lot No. 382 from the title of Gaudencia Valencia, who sold the entire property to the former. Appellant relied on the face of Transfer Certificate of Title No. 148 in the name of Gaudencia Valencia, which was free from any encumbrances or annotation."[31]

We agree with the Court of Appeals' ruling in this regard.

It is a well-settled doctrine that one who deals with property registered under the Torrens system need not go beyond the same, but only has to rely on the certificates of title. He is

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[29] *Rollo*, pp. 79-80.

[30] *Id.* at 37.

[31] *Id.* at 80.

charged with notice only of such burdens and claims as are annotated on the certificates.[32]

In the case at bar, TCT No. 110, which represented proof of respondent Abella's ownership of Lot No. 382, did not contain any encumbrance or annotation that was transferred from its title of origin — TCT No. 148. It must be recalled that the plaintiffs called Abella as one of their witnesses during the trial of this case. It is Abella's unrebutted testimony, elicited as a hostile witness for the plaintiffs, that her predecessor-in-interest's (Valencia's) title was clean when she (Abella) purchased the property.[33] To be sure, the burden to prove that Abella had notice of any defect in the title of her predecessor lies with the plaintiffs. Plaintiffs failed to substantiate their contention. On the contrary, their own evidence tended to prove that Abella was a purchaser in good faith of the property.

Likewise, there is no cogent reason or legal compulsion for respondent Abella to inquire beyond Valencia's title over the property at issue since the latter had been in possession of Lot No. 382 prior to the sale. Settled is the rule that a buyer of real property in possession of persons other than the seller must be wary and should investigate the rights of those in possession, for without such inquiry the buyer can hardly be regarded as a buyer in good faith and cannot have any right over the property.[34] As pointed out by the assailed Court of Appeals' Decision, Valencia had been occupying the property prior to its sale to respondent Abella. Herein petitioners were never in possession of the property from the very start, nor did they have any idea that they were entitled to the fruits of the property not until co-petitioner Meleriana Saves wrote her relatives, co-petitioners in this case, about the possibility of having a claim to the property.[35]

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[32] *Barstowe Philippines Corporation v. Republic*, G.R. No. 133110, March 28, 2007, 519 SCRA 148, 189; *Republic v. Mendoza, Sr.*, G.R. No. 153726, March 28, 2007, 519 SCRA 203, 231.

[33] TSN, February 5, 1985, p. 12.

[34] *Tanglao v. Parungao*, G.R. No. 166913, October 5, 2007, 535 SCRA 123, 132.

[35] *Rollo*, p. 22.

Neither does the plaintiffs' insistence that Exhibits "G" and "H" (the deeds of sale executed in favor of Valencia) were void support their theory that Abella is a purchaser in bad faith. To begin with, we agree with the Court of Appeals' ruling that the purported irregularities in Exhibits "G" and "H" relied upon by the trial court hardly suffice to deem the said contracts as null and void. There is no need to repeat the Court of Appeals' comprehensive and apt discussions on this point here. What must be highlighted, however, is the fact that Abella had no participation in the execution of Exhibits "G" and "H" which were signed by the parties thereto when she was very young. Like any stranger to the said transactions, it was reasonable for Abella to assume that these public documents were what they purport to be on their face in the absence of any circumstance to lead her to believe otherwise.

A purchaser in good faith is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before he has notice of the adverse claims and interest of another person in the same property.[36] Clearly, the factual circumstances surrounding respondent Abella's acquisition of Lot No. 382 makes her an innocent purchaser for value or a purchaser in good faith.

Finally, on the issue of whether or not petitioners, in the remote possibility that they are co-owners of Lot No. 382, are barred from asserting their claims over the same because of estoppel by laches, petitioners argue that they are not guilty of unreasonable and unexplained delay in asserting their rights, considering that they filed the action within a reasonable time after their discovery of the allegedly fictitious deeds of sale, which evinced Lot No. 382's transfer of ownership to Valencia, in 1980. They maintain that the delay in the discovery of the simulated and fictitious deeds was due to the fact that Escolastico Saves with spouse Valencia committed the acts surreptitiously by taking advantage of the lack of education of plaintiffs' ascendants.[37]

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[36] *Chua v. Soriano*, G.R. No. 150066, April 13, 2007, 521 SCRA 68, 78.

[37] *Rollo*, p. 102.

Respondents counter petitioners' claims by underscoring the fact that, since the 1940's when their predecessors-in-interest sold their shares in and over Lot No. 382 up to the filing of this case in 1981, petitioners had never taken possession of Lot No. 382 nor did they file any claim adverse to the ownership of Gaudencia Valencia. Since the sale of Lot No. 382 by Valencia to respondent Abella in 1961 up to 1981 when this case was filed, petitioners had continued to sleep on their professed rights. As found by the Court of Appeals, "[p]laintiffs were never in possession of the property from the very start, nor did they have any inkling that they were entitled to the fruits of the property, not until one of the plaintiffs wrote her relatives about the possibility of being heirs to the property."[38]

On this issue, we again hold in favor of respondents.

Laches is defined as the failure to assert a right for an unreasonable and unexplained length of time, warranting a presumption that the party entitled to assert it has either abandoned or declined to assert it.[39] In the case at bar, plaintiffs, assuming that they or their predecessors-in-interest had rights over the land in question, obviously neglected to exercise these rights by failing to assert any adverse claim over the property or demand any share of its fruits for many years. Not unlike their predecessors, petitioners never interposed any challenge to Valencia's continued possession under title of ownership over Lot No. 382 ever since the entire property was sold to her in 1947 which led to the issuance of TCT No. 148 in her name. Likewise, petitioners and their predecessors-in-interest did not mount any opposition to the sale of Lot No. 382 by Valencia to respondent Abella in 1961 which prompted the issuance of TCT No. 110. It was not only until 1981, or 34 years from Valencia's

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

[39] *Pilapil v. Heirs of Maximino R. Briones*, G.R. No. 150175, February 5, 2007, 514 SCRA 197, 218; *Regalado v. Go*, G.R. No. 167988, February 6, 2007, 514 SCRA 616, 635; *Republic v. Unimex Micro-Electronics GmBH*, G.R. Nos. 166309-10, March 9, 2007, 518 SCRA 19, 28; *Cañezo v. Rojas*, G.R. No. 148788, November 23, 2007, 538 SCRA 242, 259.

acquisition of the entire lot and 20 years from the transfer of ownership over the same to respondent Abella, that petitioners decided to assert their alleged rights over the property in a proper action in court.

Petitioners contend that the delay is attributable to the surreptitious manner by which Valencia acquired Lot No. 382 from their predecessors-in-interest but, on this point, petitioner's evidence gravely lacks credibility and weight as shown by the records. Instead, the evidence thus presented by both parties, as found by the Court of Appeals, would lean towards the conclusion that petitioners' inaction for the past so many years belies any present conviction on their part that they have any existing interest over the property at all. Thus, even if we grant that petitioners are co-owners of the property at issue, it is only fair and reasonable for this Court to apply the equitable principle of estoppel by laches against them in order to avoid an injustice to respondent Abella who is the innocent purchaser for value in this case.[40]

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals, dated June 28, 2001 in CA-G.R. CV No. 51058, is hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Corona, C.J. (Chairperson), Carpio Morales,[*] *Del Castillo,* and *Perez, JJ.,* concur.

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[40] *Estate of the Late Jesus S. Yujuico v. Republic*, G.R. No. 168661, October 26, 2007, 537 SCRA 513, 530.

[*] Per Raffle dated September 27, 2010.

SECOND DIVISION

[G.R. No. 153998. October 6, 2010]

JORGE L. TIANGCO, THE HEIRS OF ENRIQUE L. TIANGCO, GLORIA T. BATUNGBACAL, NARCISO L. TIANGCO and SILVINO L. TIANGCO, *petitioners, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PROPER REMEDY TO ASSAIL DECISION OF THE SPECIAL AGRARIAN COURTS; APPLICATION, CLARIFIED.— In *Land Bank of the Philippines v. De Leon*, it was ruled that a petition for review is indeed the correct mode of appeal from decisions of Special Agrarian Courts. Therein, the Court held that "Section 60 of Republic Act No. 6657 clearly and categorically states that the said mode of appeal should be adopted." However, in a Resolution issued by the Court *en banc*, dated March 20, 2003, which ruled on the motion for reconsideration filed by the LBP, the Court clarified that its decision in *De Leon* shall apply only to cases appealed from the finality of the said Resolution.

2. ID.; ID.; ID.; ID.; REQUISITES; THAT APPELLEE BE SERVED TWO COPIES OF APPELLANT'S BRIEF; FAILURE THEREOF WILL NOT AUTOMATICALLY RESULT TO DISMISSAL OF APPEAL.— Section 7, Rule 44 of the Rules of Court requires the appellant to serve two copies of the appellant's brief to the appellee. However, the failure to serve the required number of copies does not automatically result in the dismissal of the appeal. Thus, this Court held in *Philippine National Bank v. Philippine Milling Co., Inc.* that: [P]ursuant to Section 1 of Rule 50 of the Rules of Court, "(a)n appeal **may** be dismissed by the Court of Appeals, on its own motion or on that of the appellee" upon the ground, among others, of "(f)ailure of the appellant x x x to serve and file the required number of copies of his brief," within the reglementary period. **Manifestly, this provision confers a power and does not impose a duty. What is more, it is directory, not mandatory.**

The CA has, under the said provision of the Rules of Court, discretion to dismiss or not to dismiss respondent's appeal. Although said discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case, the presumption is that it has been so exercised.

3. ID.; ID.; ID.; ID.; ID.; ID.; BASIC RULES RE NON-FILING OF APPELLANT'S BRIEF WITH THE CA AND ITS CONSEQUENCES.— In *The Government of the Kingdom of Belgium v. Court of Appeals*, the Court laid down the basic rules with respect to the issue of non-filing of appellant's brief with the CA and its consequences, to wit: (1) The general rule is for the Court of Appeals to dismiss an appeal when no appellant's brief is filed within the reglementary period prescribed by the rules; (2) The power conferred upon the Court of Appeals to dismiss an appeal is discretionary and directory and not ministerial or mandatory; (3) The failure of an appellant to file his brief within the reglementary period does not have the effect of causing the automatic dismissal of the appeal; (4) In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the court's leniency it is imperative that: (a) the circumstances obtaining warrant the court's liberality; (b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice; (c) no material injury has been suffered by the appellee by the delay; (d) there is no contention that the appellees' cause was prejudiced; (e) at least there is no motion to dismiss filed. (5) In case of delay, the lapse must be for a reasonable period; and (6) Inadvertence of counsel cannot be considered as an adequate excuse as to call for the appellate court's indulgence except: (a) where the reckless or gross negligence of counsel deprives the client of due process of law; (b) when application of the rule will result in outright deprivation of the client's liberty or property; or (c) where the interests of justice so require.

APPEARANCES OF COUNSEL

David G. Paguio for petitioners.
Gonzales Beramo & Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a special civil action for *certiorari* seeking to set aside the Resolutions dated October 5, 2001[1] and June 4, 2002[2] of the Court of Appeals (CA) in CA-G.R. CV No. 61676. The October 5, 2001 Resolution denied petitioners' Motion to Dismiss respondent's appeal, while the June 4, 2002 Resolution denied petitioners' Motion for Reconsideration.

The facts of the case are as follows:

On August 11, 1994, herein petitioners filed a Complaint[3] for "Fixing and Payment of Land Compensation and Annulment of Titles & Emancipation Patents" with the Regional Trial Court (RTC) of Bataan against the Secretary of Agrarian Reform, the Register of Deeds of Bataan and some private individuals, identified as their tenants.

The Complaint was later amended to implead as additional defendant herein respondent, Land Bank of the Philippines (LBP).[4]

Pertinent portions of petitioners' Amended Complaint alleged as follows:

> 3. Plaintiffs [herein petitioners] are the registered owners of a parcel of land situated at Cupang, Balanga Bataan, with an area of 141,716 square meters, more or less, covered by Transfer Certificate of Title No. T-111310 and declared for tax purposes under Tax Declaration No. 323371. x x x
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> x x x x x x x x x

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[1] Penned by Associate Justice Hilarion L. Aquino, with Associate Justices Cancio C. Garcia (a retired member of this Court) and Edgardo P. Cruz, concurring; *rollo*, pp. 114-118.

[2] *Id.* at 124-125.

[3] Records, pp. 1-5.

[4] *Id.* at 102-107.

5. Private defendants LAURIANO BAUTISTA, FORTUNATO TOLENTINO, DIONISIO ALONZO, DOMINGO REYES, ALFREDO Q. ESTACAMENTO, BIENVENIDO A. VASQUEZ, JOSE BAUTISTA, MOISES G. QUIROZ and ROGELIO S. BAUTISTA were agricultural tenants on the above-described parcel of land, tilling distinct and separate portions thereof with different areas.

6. x x x, unknown to plaintiffs, Emancipation Patents (EPs) were issued to private defendants by the Secretaries of Agrarian Reform, predecessor in office of defendant SECRETARY OF AGRARIAN REFORM, after which Transfer Certificate of Title were issued to private defendants by defendant Register of Deeds of Bataan, x x x.

7. The issuance of the Emancipation Patents and the Transfer Certificates of Title to private defendants was unlawful because plaintiffs, who are the owners of the land distributed to the tenants by defendant SECRETARY OF AGRARIAN REFORM through his predecessors in office and subsequently titled in their names by defendant REGISTER OF DEEDS OF BATAAN, and who did not consent to the transfer of possession and ownership, have not been compensated for the value of said land. x x x

x x x x x x x x x

8. As a matter of fact, the reasonable value of plaintiffs' land at which they should be compensated has not even been determined, and until the same is determined and fixed, plaintiffs cannot hope to be compensated, but in the meantime, oppressively against plaintiffs-landowners, private defendants are in possession and do not pay lease rentals to plaintiffs. x x x[5]

In his Answer,[6] the Secretary of the Department of Agrarian Reform (DAR) denied the material allegations in the Amended Complaint and contended that the case should be dismissed for failure of the plaintiffs to exhaust administrative remedy. The DAR Secretary contended that petitioners failed to bring the case before the DAR Adjudication Board (DARAB) which has primary, original and appellate jurisdiction to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program.

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[5] *Id.* at 103-105.

[6] *Id.* at 135-137.

On the other hand, the private individuals, who were impleaded in their capacity as tenants, contended in their Answer that the Emancipation Patents were regularly issued to them by the DAR after the land has been valued in accordance with laws, rules and regulations then prevailing, and that petitioners, as landowners, have been paid the value thereof through the LBP financing scheme. The tenants further averred that petitioners are already estopped from questioning the value of the land after they failed to challenge it when the property was being valued in accordance with laws and other guidelines.[7]

The LBP also denied the material allegations in the Amended Complaint contending that in cases of land transfer claims covered by Presidential Decree No. 27 and Executive Order No. 228, the government agency which has direct responsibility in valuing lands is the DAR and not the LBP; the reason why petitioners have not yet been paid their claims is because of their refusal to comply with the administrative requirements needed for such payment; and, contrary to petitioners' allegations, they received lease rentals from the farmer-beneficiaries named in the Emancipation Patents.[8]

After due proceedings, the RTC issued its Decision[9] dated June 9, 1998, the dispositive portion of which reads as follows:

> WHEREFORE, let the land of the plaintiffs be appraised at Thirty Pesos (₱30.00), Philippine Currency, per square meter to be paid to the plaintiffs, without any pronouncement as to costs.
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> SO ORDERED.[10]

After their Motions for Reconsideration were denied, the LBP, the DAR and the group of tenants filed their respective appeals with the CA by filing Notices of Appeal[11] in accordance with Rule 41 of the Rules of Court.

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[7] *Id.* at 99-101.

[8] *Id.* at 138-140.

[9] *Id.* at 310-315.

[10] *Id.* at 315.

[11] *Id.* at 345, 347 and 350, respectively.

In a Resolution[12] dated July 13, 1999, the CA dismissed the appeal of the tenants for their failure to pay the docket and other lawful fees. On the other hand, the CA required the LBP and the DAR to file their respective Appeal Briefs.[13]

The LBP and the DAR moved for extension of time to file their Briefs.[14] Their motion was granted.[15]

In its Motion[16] dated May 21, 2001, the LBP again moved for extension of time to file its Brief.

On June 25, 2001, the CA issued a Resolution[17] granting LBP's motion and giving it another extension of twenty days to file its Brief. The CA, in the same Resolution, also noted the Brief which was filed prior to the grant of the said motion.

Thereafter, herein petitioners filed a Motion for Reconsideration[18] of the June 25, 2001 Resolution of the CA contending that the appellate court committed error in granting the said motion, because at the time the LBP filed its motion for extension dated May 21, 2001, the period originally granted by the CA had already expired.

Subsequently, on July 12, 2001, herein petitioners filed a Motion to Dismiss Appeals and to Suspend Period for Filing Appellees' Brief,[19] contending that the LBP's proper mode of appeal should have been a petition for review and not an ordinary appeal, that the LBP failed to serve on petitioners two copies of its Appellant's Brief, and that the LBP failed to seasonably file the said Brief.

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[12] CA *rollo*, p. 33.

[13] *Id.* at 49.

[14] *Id.* at 50-51 and 53-54, respectively.

[15] *Id.* at 58.

[16] *Id.* at 77-80.

[17] *Id.* at 82.

[18] *Id.* at 83-84.

[19] *Id.* at 95-100.

On August 14, 2001, the CA issued a Resolution[20] considering the appeal of DAR as abandoned and dismissed the same for the latter's failure to file its Appeal Brief within the extended period granted by the court. In the same Resolution, the LBP was required to file its Comment on petitioners' Motion to Dismiss Appeals. The LBP complied and filed its Comment.[21] Petitioners also filed their Reply.[22]

On October 5, 2001, the CA rendered the presently assailed Resolution[23] denying herein petitioners' Motion to Dismiss the appeal of the LBP.

Petitioners filed their Motion for Reconsideration, but the CA denied it in its Resolution[24] dated June 4, 2002.

Hence, the present petition for *certiorari* based on the following grounds:

I. THE APPEALED JUDGMENT HAS LONG BECOME FINAL AND EXECUTORY DUE TO RESPONDENT LBP'S FAILURE TO FILE A PETITION FOR REVIEW.

x x x x x x x x x

II. RESPONDENT LBP FAILED TO SERVE ON PETITIONERS TWO (2) COPIES OF ITS APPELLANT'S BRIEF.

x x x x x x x x x

III. RESPONDENT LBP MUST BE DEEMED NOT TO HAVE FILED A BRIEF BY ITS FAILURE TO FILE ONE WITHIN THE REGLEMENTARY PERIOD.[25]

Petitioners contend that the proper mode or remedy that should have been taken by the LBP in assailing the Decision of the

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[20] *Id.* at 101.

[21] *Id.* at 112-122.

[22] *Id.* at 107.

[23] *Id.* at 154-158.

[24] *Id.* at 201-202.

[25] *Rollo,* pp. 10-14.

RTC, acting as a Special Agrarian Court, is a petition for review and not an ordinary appeal.

The Court does not completely agree.

This same issue was squarely addressed and settled by the Court in *Land Bank of the Philippines v. De Leon*,[26] wherein it was ruled that a petition for review is indeed the correct mode of appeal from decisions of Special Agrarian Courts. Therein, the Court held that "Section 60 of Republic Act No. 6657 clearly and categorically states that the said mode of appeal should be adopted."

However, in a Resolution[27] issued by the Court *en banc*, dated March 20, 2003, which ruled on the motion for reconsideration filed by the LBP, the Court clarified that its decision in *De Leon* shall apply only to cases appealed from the finality of the said Resolution. The Court held:

> x x x LBP pleads that the subject Decision should at least be given prospective application considering that more than 60 similar agrarian cases filed by LBP via ordinary appeal before the Court of Appeals are in danger of being dismissed outright on technical grounds on account of our ruling herein. This, according to LBP, will wreak financial havoc not only on LBP as the financial intermediary of the Comprehensive Agrarian Reform Program but also on the national treasury and the already depressed economic condition of our country. Thus, in the interest of fair play, equity and justice, LBP stresses the need for the rules to be relaxed so as to give substantial consideration to the appealed cases.
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> x x x x x x x x x
>
> On account of the absence of jurisprudence interpreting Sections 60 and 61 of RA 6657 regarding the proper way to appeal decisions of Special Agrarian Courts, as well as the conflicting decisions of the Court of Appeals thereon, LBP cannot be blamed for availing of the wrong mode. Based on its own interpretation and reliance on [a ruling issued by the CA holding that an ordinary appeal is the proper

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[26] 437 Phil. 347, 356 (2002).

[27] *Land Bank of the Philippines v. De Leon*, 447 Phil. 495 (2003).

mode], LBP acted on the mistaken belief that an ordinary appeal is the appropriate manner to question decisions of Special Agrarian Courts.

Hence, in the light of the aforementioned circumstances, we find it proper to emphasize the prospective application of our Decision dated September 10, 2002. A prospective application of our Decision is not only grounded on equity and fair play, but also based on the constitutional tenet that rules of procedure shall not impair substantive rights.

x x x x x x x x x

We hold that our Decision, declaring a petition for review as the proper mode of appeal from judgments of Special Agrarian Courts, is a rule of procedure which affects substantive rights. If our ruling is given retroactive application, it will prejudice LBP's right to appeal because pending appeals in the Court of Appeals will be dismissed outright on mere technicality thereby sacrificing the substantial merits thereof. It would be unjust to apply a new doctrine to a pending case involving a party who already invoked a contrary view and who acted in good faith thereon prior to the issuance of said doctrine.

x x x x x x x x x

WHEREFORE, the motion for reconsideration dated October 16, 2002 and the supplement to the motion for reconsideration dated November 11, 2002 are PARTIALLY GRANTED. While we clarify that the Decision of this Court dated September 10, 2002 stands, **our ruling therein that a petition for review is the correct mode of appeal from decisions of Special Agrarian Courts shall apply only to cases appealed after the finality of this Resolution.**

SO ORDERED.[28]

In the present case, the LBP filed its Notice of Appeal on September 1, 1998. Thus, pursuant to the ruling that *De Leon* shall be applied prospectively from the finality of this Court's Resolution dated March 20, 2003, the appeal of the LBP, which was filed prior to that date, could, thus, be positively acted upon.

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[28] *Id.* at 500-505. (Emphasis supplied)

Petitioners also assert that the LBP's appeal filed with the CA should have been dismissed on the ground that the LBP failed to serve two copies of its Appellant's Brief to petitioners. Petitioners argue that under Section 7, Rule 44 of the Rules of Court, the appellant is required to serve two copies of his Brief on the appellee and that, in relation with the said Rule, one of the grounds for dismissing an appeal under Section 1(e), Rule 50 of the same Rules is the failure of the appellant to serve and file the required number of copies of his Brief or Memorandum within the time provided by the Rules.

The Court is not persuaded.

Indeed, Section 7,[29] Rule 44 of the Rules of Court requires the appellant to serve two copies of the appellant's brief to the appellee. However, the failure to serve the required number of copies does not automatically result in the dismissal of the appeal. Thus, this Court held in *Philippine National Bank v. Philippine Milling Co., Inc.*[30] that:

> [P]ursuant to Section 1 of Rule 50 of the Rules of Court, "(a)n appeal ***may*** be dismissed by the Court of Appeals, on its own motion or on that of the appellee" upon the ground, among others, of "(f)ailure of the appellant x x x to serve and file the required number of copies of his brief," within the reglementary period**. Manifestly, this provision confers a power and does not impose a duty. What is more, it is directory, not mandatory**.[31]

The CA has, under the said provision of the Rules of Court, discretion to dismiss or not to dismiss respondent's appeal. Although said discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in

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[29] Sec. 7. *Appellant's brief.* — It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

[30] 136 Phil. 212 (1969).

[31] *Id.* at 215. (Emphasis supplied).

mind the circumstances obtaining in each case, the presumption is that it has been so exercised.[32] It is incumbent upon herein petitioners, as actors in the case at bar, to offset this presumption. Yet, the records before the Court do not satisfactorily show that the CA has committed grave abuse of discretion in not dismissing the LBP's appeal.

There is no question that the LBP was only able to serve on petitioners one copy of its appellant's brief. However, settled is the rule that a litigant's failure to furnish his opponent with a copy of his appeal brief does not suffice to warrant dismissal of that appeal.[33] In such an instance, all that is needed is for the court to order the litigant to furnish his opponent with a copy of his brief. In the instant case, with much less reason should the LBP's appeal be dismissed, because petitioners were served with the LBP's brief, albeit only one copy was given to them. The Court would be dwelling too much on technicality if the appeal is dismissed simply on the ground that LBP failed to furnish petitioners with two copies, instead of only one, of its appeal brief. Indeed, there is no showing, and the Court finds none in the instant petition, that such procedural lapse on the part of the LBP resulted in material injury to the latter.

Lastly, the Court does not agree with petitioners' contention that the CA committed grave abuse of discretion in not dismissing the LBP's appeal on the ground that the latter failed to file its Appellant's Brief on time.

In *The Government of the Kingdom of Belgium v. Court of Appeals*,[34] the Court laid down the basic rules with respect to the issue of non-filing of appellant's brief with the CA and its consequences, to wit:

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[32] *Yuchengco v. Court of Appeals*, G.R. No. 165793, October 27, 2006, 505 SCRA 716, 721, citing *Philippine National Bank v. Philippine Milling Co., Inc.*, *supra* note 29.

[33] *Trinidad Go, etc. v. Vicente Velez Chaves, etc.*, G.R. No. 182341, April 23, 2010.

[34] G.R. No. 164150, April 14, 2008, 551 SCRA 223.

(1) The general rule is for the Court of Appeals to dismiss an appeal when no appellant's brief is filed within the reglementary period prescribed by the rules;

(2) The power conferred upon the Court of Appeals to dismiss an appeal is discretionary and directory and not ministerial or mandatory;

(3) The failure of an appellant to file his brief within the reglementary period does not have the effect of causing the automatic dismissal of the appeal;

(4) In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the court's leniency it is imperative that:

(a) the circumstances obtaining warrant the court's liberality;

(b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice;

(c) no material injury has been suffered by the appellee by the delay;

(d) there is no contention that the appellees' cause was prejudiced;

(e) at least there is no motion to dismiss filed.

(5) In case of delay, the lapse must be for a reasonable period; and

(6) Inadvertence of counsel cannot be considered as an adequate excuse as to call for the appellate court's indulgence except:

(a) where the reckless or gross negligence of counsel deprives the client of due process of law;

(b) when application of the rule will result in outright deprivation of the client's liberty or property; or

(c) where the interests of justice so require.[35]

In this regard, the Court's pronouncement in *Natonton v. Magaway*[36] is apropros:

> As held by the Court in *Gregorio v. Court of Appeals* (70 SCRA 546 [1976]), "**(T)he expiration of the time to file brief**, unlike lateness in filing the notice of appeal, appeal bond or record on appeal **is not a jurisdictional matter and may be waived by the parties. Even after the expiration of the time**

[35] *Id.* at 241-242.

[36] G.R. No. 147011, March 31, 2006, 486 SCRA 199.

> **fixed for the filing of the brief, the reviewing court may grant an extension of time, at least where no motion to dismiss has been made. Late filing or service of briefs may be excused where no material injury has been suffered by the appellee by reason of the delay or where there is no contention that the appellee's cause was prejudiced."**

Technically, the Court of Appeals may dismiss an appeal for failure to file appellant's brief on time. However, the dismissal is **directory, not mandatory**. It is not the ministerial duty of the court to dismiss the appeal. The failure of an appellant to file his brief within the time prescribed does not have the effect of dismissing the appeal automatically. The court has discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.

We observe that petitioners' arguments are based on technical grounds. While indeed respondents did not file their brief seasonably, it was not mandatory on the part of the Court of Appeals to dismiss their appeal. As held by this Court in the above-cited cases, late filing of brief may be excused. In other words, the dismissal of respondents' appeal on that ground is discretionary on the part of the Appellate Court.

Significantly, there is no showing that petitioners suffered a material injury or that their cause was prejudiced when respondents failed to submit their brief promptly. What is clear is that the latter incurred delay in the filing of their brief because when the deadline fell due, they were not yet represented by a new counsel.

The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice, but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts, in rendering justice, have always been, as they in fact ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around. As applied to the instant case, in the language of then Chief Justice Querube Makalintal, technicalities "should give way to the realities of the situation." (Emphasis supplied.)[37]

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[37] *Id.* at 204-205.

It is true that in the instant case, petitioners filed a motion to dismiss. However, the same was submitted only after the CA had already granted the LBP's motion for extension of time to file its brief and such brief was already filed with the appellate court.

In *Aguam v. Court of Appeals*,[38] this Court excused a delay of nine (9) days in the filing of a motion for extension of the appellant's brief holding that:

> In the higher interest of justice, considering that the delay in filing a motion for extension to file appellant's brief was only for nine (9) days, and normally, the Court of Appeals would routinely grant such extension, and the appellant's brief was actually filed within the period sought, the better course of action for the Court of Appeals was to admit appellant's brief.
>
> Lapses in the literal observance of a rule of procedure will be overlooked when they arose from an honest mistake, when they have not prejudiced the adverse party. The Court can overlook the late filing of the motion for extension, if strict compliance with the rules would mean sacrificing justice to technicality.[39]

Based on the abovequoted ruling, with more reason should the LBP's delay in filing its second motion for extension be excused, because such delay was only for five days. Moreover, the LBP was able to file its Appellant's Brief within the second period of extension granted by the CA.

In the same manner, in *Heirs of Victoriana Villagracia v. Equitable Banking Corporation*,[40] the petitioners therein failed to file their Appellant's Brief with the CA within the reglementary period. They also failed to file their motion for extension before the expiration of the time sought to be extended. In relaxing the application of the procedural rules and, thus, allowing the appeal to be reinstated, the Court held as follows:

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[38] 388 Phil. 587 (2000).

[39] *Id.* at 595.

[40] G.R. No. 136972, March 28, 2008, 550 SCRA 60.

However, in the instant case, we are of the view that the ends of justice will be better served if it is determined on the merits, after full opportunity is given to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. It is far better to dispose of the case on the merits, which is a primordial end, rather than on a technicality that may result in injustice. While it is desirable that the Rules of Court be faithfully observed, courts should not be too strict with procedural lapses that do not really impair the proper administration of justice. The rules are intended to ensure the proper and orderly conduct of litigation because of the higher objective they seek, which is the attainment of justice and the protection of substantive rights of the parties. In *Republic v. Imperial* [362 Phil. 466], the Court, through Mr. Chief Justice Hilario G. Davide, Jr., stressed that the filing of the appellant's brief in appeals is not a jurisdictional requirement. But an appeal may be dismissed by the CA on grounds enumerated under Rule 50 of the Rules of Court. The Court has the power to relax or suspend the rules or to except a case from their operation when compelling reasons so warrant, or when the purpose of justice requires it. What constitutes good and sufficient cause that will merit suspension of the rules is discretionary upon the court.

In the case at bench, without touching on the merits of the case, there appears a good and efficient cause to warrant the suspension of the rules. Petitioners' failure to file the appeal brief within the extended period may have been rendered excusable by force of circumstances. Petitioners had to change their counsel because he was appointed judge of the Municipal Circuit Trial Court. Their new counsel had to go over the six (6) volumes of the records of the case to be able to file an intelligent brief. Thus, a few days of delay in the filing of the motion for extension may be justified. In addition, no material injury was suffered by the appellees by reason of the delay in the filing of the brief.

Dismissal of appeals on purely technical grounds is not encouraged. The rules of procedure ought not to be applied in a very rigid and technical sense, for they have been adopted to help secure, not override, substantial justice. Judicial action must be guided by the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities. When a rigid application of the rules tends to frustrate rather than promote

substantial justice, this Court is empowered to suspend their operation.[41]

In the instant case, the LBP's delay in filing its Appellant's Brief is justified by the fact that the Legal Services Department of the LBP underwent re-organization resulting in the retirement and transfer of the remaining lawyers, cases and personnel from one department to another as well as in the merger and dissolution of other departments within the LBP. In its Manifestation, which petitioners did not dispute, the LBP claimed that by reason of the abovementioned re-organization, the lawyer handling the present case actually received a copy of the Resolution of the CA setting the deadline for the filing of its Appellant's Brief only on May 21, 2001, four days after the expiration of the period granted by the CA. Besides, there is no indication that the LBP intended to delay the proceedings, considering that it only filed two motions for extension to file its brief.

As adverted to by this Court in *De Leon*, the dismissal of the LBP's appeal, together with the other appeals it had filed, will have a great impact not only on the LBP as the financial intermediary of the Comprehensive Agrarian Reform Program, but also on the national treasury and the already depressed economic condition of our country. In other words, the instant case is impressed with public interest. As such, and in the interest of substantial justice, the Court finds that the same must be decided on the merits.

Based on the foregoing discussions, the Court finds that the CA did not commit grave abuse of discretion in denying petitioners' motion to dismiss respondent LBP's appeal.

WHEREFORE, the instant petition is *DISMISSED* for lack of merit. The Resolutions of the Court of Appeals, dated October 5, 2001 and June 4, 2002 in CA-G.R. CV No. 61676, are *AFFIRMED*. The case is *REMANDED* to the Court of Appeals, which is *DIRECTED* to continue with the proceedings therein and to terminate the same with reasonable dispatch.

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[41] *Id.* at 67-69.

SO ORDERED.

Velasco, Jr.,[*] *Nachura (Acting Chairperson),*[**] *Mendoza,* and *Sereno,*[***] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 161934. October 6, 2010]

VARORIENT SHIPPING CO., INC., and ARIA MARITIME CO., LTD., *petitioners, vs.* **GIL A. FLORES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON BOARD OCEAN-GOING VESSELS; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS.— [R]espondent is entitled to sickness wages. The shooting pain on his right foot is an injury which he suffered during the course of his employment and, therefore, obligates petitioners to compensate him and provide him the appropriate medical treatment. This is in consonance with the mandated provisions under Section 20 B (1), (2), (3), (4), and (5) of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels, pursuant to Department Order No. 4, series of 2000, of the Department of Labor and Employment (by then Secretary Bienvenido E. Laguesma), adopted on May 31, 2000.

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[*] Designated as an additional member in lieu of Senior Associate Justice Antonio T. Carpio, per Special Order No. 897, dated September 28, 2010.

[**] Per Special Order No. 898, dated September 28, 2010.

[***] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 903, dated September 28, 2010.

2. ID.; ID.; ID.; QUITCLAIM IS NOT SUBSTANTIAL COMPLIANCE TO THE CONTRACTUAL OBLIGATION UNDER THE STANDARD EMPLOYMENT CONTRACT. — Petitioners argue that the Receipt and Quitclaim sufficed to cover the balance of the sickness wages, after deducting the cash advances, which respondent would be entitled to; while respondent questions the veracity of the said document. The Receipt and Quitclaim executed by respondent lacks the elements of voluntariness and free will and, therefore, does not absolve petitioners from liability in paying him the sickness wages and other monetary claims. x x x In *More Maritime Agencies, Inc. v. NLRC*, the Court ruled that the law does not consider as valid any agreement to receive less compensation than what a worker is entitled to recover nor prevent him from demanding benefits to which he is entitled. Quitclaims executed by the employees are thus commonly frowned upon as contrary to public policy and ineffective to bar claims for the full measure of the worker's legal rights, considering the economic disadvantage of the employee and the inevitable pressure upon him by financial necessity. Thus, it is never enough to assert that the parties have voluntarily entered into such a quitclaim. There are other requisites, to wit: (a) that there was no fraud or deceit on the part of any of the parties; (b) that the consideration of the quitclaim is credible and reasonable; and (c) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.

APPEARANCES OF COUNSEL

Caraan and Associates Law Offices for petitioners.
Joseph A. Capuyan for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking to set aside the Decision[1] dated February 28, 2003, of the Court

[1] Penned by Associate Justice Regalado E. Maambong, with Associate Justices Delilah Vidallon-Magtolis and Andres B. Reyes, Jr., concurring; *rollo*, pp. 34-48.

of Appeals (CA) in CA-G.R. SP. No. 55512, entitled *Varorient Shipping Co., Inc. and Aria Maritime Co., Ltd. v. National Labor Relations Commission, Third Division and Gil A. Flores*, which affirmed with modification the Decision[2] dated May 25, 1999, and Resolution[3] dated August 18, 1999, of the National Labor Relations Commission (NLRC) in NLRC CN OCW RAB-IV-9-917-97-C, and its Resolution[4] dated January 29, 2004, denying petitioners' motion for reconsideration thereof. The assailed CA Decision ordered petitioners Varorient Shipping Co., Inc. and Aria Maritime Co., Ltd., jointly and severally, to pay respondent Gil A. Flores the balance of sickness wages in the amount of US$3,790.00, or its peso equivalent at the time of actual payment, and to reimburse his medical and surgical expenses in the total amount of ₱15,373.26, instead of ₱13,579.76. However, it dismissed all the other claims of respondent for lack of merit.

The antecedent facts are as follows:

On April 7, 1997, petitioners employed respondent, in behalf of its foreign principal, Aria Maritime Co., Ltd. of Piraeus, Greece, for the position of Chief Officer on board *M/V* Aria, per Contract of Employment[5] dated April 7, 1997, duly approved by the Philippine Overseas Employment Administration (POEA), for a period of 12 months, with a basic monthly salary of US$1,200.00 at 48 hours of work weekly, overtime pay of US$600.00, allowance of US$200.00, and vacation leave with pay of 30 days a year (or US$100.00 a month) or pro-rata. The total fixed monthly salary of respondent was US$2,100.00.

On April 16, 1997, he was deployed aboard *M/V* Aria in Bangkok, Thailand. During his employment, the master of the vessel sent respondent to the Centre Medical de Ngodi at Doula,

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[2] Penned by Commissioner Ireneo B. Bernardo, with Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo, concurring; *id.* at 63-72.

[3] CA *rollo*, pp. 30-31.

[4] *Rollo*, pp. 51-52.

[5] CA *rollo*, p. 63.

Cameroon, where he was treated for three days due to the shooting pain in the lower extremities, particularly on his right foot. In the Medical Certificate[6] dated June 19, 1997, the attending physician, Dr. R. Mongouè Tchouak, stated that he diagnosed respondent's pain on the right foot as "sciatic neuralgia" and administered "[drips], injection, and acupuncture." Respondent was declared not fit to work. The doctor recommended respondent's repatriation to the Philippines for continuing treatment.

On June 21, 1997, respondent was repatriated to the Philippines. When he reported back to work, he was referred to the company physician, Dr. John H.E. Cusi who, in turn, referred him to Dr. Irene B. Roman-Igual, a neurologist at Makati Medical Center. On June 30, 1997, respondent was subjected to the Computed Tomography Scan (CT Scan), which yielded the following results:

> CT scan examination of the lumbosacral spine demonstrates a large disc herniation ventral and right lateral at the L5-S1 level encroaching into the right neural exit foramina. There is compression of the right nerve root at the same L5-S1 level.
>
> Smaller disc protrusion is also noted ventral and bilateral at the L4-L5 interspace level obliterating the underlying epidural fatty plane.
>
> The right nerve root appears relatively swollen when compared with the left at the L5-S1.
>
> The *ligamentum flavum*, however, is not hypertrophic.
>
> The vertebral bodies, pedicles, laminae, facets and sacro-iliac joints are intact.
>
> There is straightening of the lumbar curvature, but with no compression deformities nor spondylolisthesis.
>
> IMPRESSION: Large disc herniation, ventral and right lateral at the L5-S1 level with secondary right nerve root compression and edema. Small disc protrusion also noted ventral and bilateral at the L4-L5.[7]

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[6] *Id.* at 64.

[7] *Id.* at 65.

Dr. Igual observed that the "CT scan showed large disc herniation L5-S1 with 2° nerve root compression and edema" and recommended respondent's "confinement for at least two weeks for P.T. [physical therapy] and medications; if not resolved, may need surgical decompression."[8]

In a letter[9] to petitioner Varorient dated July 29, 1997, respondent, through his counsel, stated that due to the gross and evident bad faith of petitioners in refusing to grant him continued medical assistance until he becomes fit to work, as recommended by their company doctors, he was forced to seek medical treatment at his own expense.[10] Respondent demanded that petitioners should provide him medical treatment and pay him sickness wages and disability compensation, within five (5) days from receipt of the letter; otherwise, he would be constrained to institute appropriate legal action against them.

In a Certification[11] dated November 7, 1997, Dr. Copernico J. Villaruel, Jr., attending orthopedic surgeon at the Philippine General Hospital, stated that respondent has been admitted under his care from October 9 to 10, 1997 for hemilaminectomy and foraminotomy of L4-L5 and L5-SI, due to the pain in his right foot, and that respondent is now fit to go back to work.

Acting on the endorsement letter[12] dated November 24, 1997 by Labor Arbiter Pedro C. Ramos, Dr. Francisco A. Estacio,

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[8] *Id.* at 66.

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

[10] The Summary of Medical Expenses incurred were: Mercury Drug medicines — ₱4,218.20; Perpetual Help Medical Center - ₱4,030.00; Doctor's Blood Center, Surgicare Corporation, and Philippine General Hospital — ₱1,573.25; and Doctor's Fees and hospital bills (Philippine General Hospital) — ₱84,147.76. The total amount of the medical, hospital, doctor's fees and allied expenses was ₱93,969.21. (*Id.* at 69-70).

[11] CA *rollo*, p. 88.

[12] *Id.* at 87. The text of the letter request reads: For and in behalf of Mr. Gil Flores, complainant in NLRC Case No. OCW RAB-IV-9-917-97-C, entitled: *Gil A. Flores vs. Varorient Shipping Co., Inc. and Aria Maritime Co., Ltd.*, his medical check-up is hereby requested to determine the degree

Chief of the Medical and Rehabilitation Division of the Employees Compensation Commission (ECC), submitted the Disability Evaluation Report[13] dated December 15, 1997, conducted on the health condition of respondent, with the following findings:

PHYSICAL EXAMINATION:
- Fairly developed fairly nourished
- Head, Eyes, Ears, Nose, and Throat no abnormal findings
- Heart and lungs – no rales and no murmur appreciated
- Abdomen – no abnormal finding
- Extremities – no limitation of movements, no atrophy of muscles.

DIAGNOSIS:

- Large Herniated Disc L5 S1, with Nerve Roat Compression and Edema
- Small Disc Protrusion, L4 L5

RECOMMENDATION:

Based on ECC Schedule of Compensation, the Complainant deserves to receive daily income benefit for the loss of income he incurred from June 1997 to November 1997, plus reimbursement of hospital and medical expenses for his injury, Herniated Disc.

On September 19, 1997, respondent filed a Complaint[14] against petitioners, alleging that (1) per his employment contract, he boarded *M/V* Aria at Bangkok, Thailand on April 16, 1997; (2) prior to his deployment, he was employed by petitioner for the past 12 years; (3) during his employment and while in the performance of his duties, he suffered injuries consisting of "large disc herniation, ventral and right lateral at the L5-S1

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of his disability needed in the resolution of his complaint for disability benefits and sickness wages, as well as whether or not medical treatment on him is still required and reimbursement of his medical expenses that [may be] incurred in connection with his alleged ailment, against respondent Varorient Shipping Co., Inc. and Aria Maritime Co., Ltd. arising from his employment as seaman (Chief Officer).

[13] *Id.* at 71-72.

[14] *Id.* at 45-51.

level with secondary right and nerve root compression and edema, small disc protrusion also noted at ventral and bilateral at the L4-L5"; (4) due to petitioners' refusal to provide for his medical treatment and continued failure to pay his sickness wages amounting to US$4,800.00, he was constrained to provide for his own medical expenses; (5) his injuries constituted permanent and total disability which, under POEA Memorandum Circular No. 5, series of 1994, would make petitioners liable for disability benefits under his employment contract in the amount of US$60,000.00; and (6) his injury or disability was directly and proximately due to the direct and vicarious acts of negligence of petitioners and their agents. Respondent prayed that judgment be rendered, declaring petitioners liable to reimburse his medical and hospital expenses in the total amount of ₱103,969.00 and to pay him disability benefits in the amount of US$60,000.00, sickness wages of US$4,800.00, compensatory damages of US$604,800.00 (this amount was reduced to US$13,370.00 in his Position Paper), moral damages of ₱1,100,000.00, and exemplary damages and attorney's fees in such an amount as the labor arbiter may deem proper.

In his Position Paper,[15] respondent sought reimbursement of his medical expenses and asserted that petitioners are liable to pay him sickness wages, compensatory damages, moral damages, and attorney's fees. However, respondent withdrew his claim for disability benefits with reservation to re-file a complaint should there be a recurrence of his injury.

In their Position Paper,[16] petitioners countered that respondent is not entitled to the benefits arising from his alleged permanent and total disability as he was later declared to be fit to work per Certification dated November 7, 1997 by Dr. Copernico J. Villaruel, Jr., the attending orthopedic surgeon at the Philippine General Hospital; that respondent can no longer seek continuation of his medical treatment and claim for sickness wages and reimbursement of medical expenses because upon his repatriation,

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[15] *Id.* at 52-62.

[16] *Id.* at 73-84.

he had received the amount of US$1,010.00 (or the equivalent then of about ₱40,400.00) as settlement for his sickness wages and other benefits, as evidenced by the Receipt and Quitclaim[17] dated June 25, 1997, executed by respondent; and that respondent is not entitled to moral and exemplary damages and attorney's fees. By way of counterclaim, they sought recovery of litigation expenses, actual damages, and attorney's fees in an amount not less than ₱20,000.00 and, also, exemplary damages in an amount at the discretion of the labor arbiter.

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[17] *Id.* at 92. The pertinent portions of the Receipt and Quitclaim state:

RECEIPT AND QUITCLAIM

KNOW ALL MEN BY THESE PRESENTS:

I, GIL FLORES, with a rank of CHIEF OFFICER and presently residing at B-3L-6 Camella Homes, Mambog, Bacoor, Cavite, do hereby acknowledge receipt of the amount of USD$1,010.00 or its Peso Equivalent to my full satisfaction, in complete and final settlement of my wages, bonuses, overtime pay, leave pay, allotments and all other entitlements due to me as a result of my services rendered and employment on board the vessel *M/V* ARIA.

I hereby declare and confirm that I have no other claims whatsoever against said vessel, her Master, Owners, Operators and Agents and I hereby discharge and release them from any liability/ies.

I certify and confirm that I have worked on board the said vessel under normal conditions and that I have not contracted or suffered any illness or injury from my work and that I was discharged in good and perfect health. I further certify that with this RECEIPT AND QUITCLAIM, I waived the unexpired portion of my contract.

I agree further, that this RECEIPT AND QUITCLAIM may be pleaded as an absolute and final bar to any complaint or legal proceeding that may hereafter be prosecuted by me. And that, I hereby certify that I have read this RECEIPT AND QUITCLAIM before signing the same and that I fully understand the contents thereof.

IN WITNESS WHEREOF. I have hereunto sign this RECEIPT AND QUITCLAIM with my own free will and volition on this 25th day of June, 1997 at Makati City, Philippines.

(Signed)
GIL FLORES
Seaman

SIGNED IN THE PRESENCE OF:

_____

In their Supplement to Position Paper,[18] petitioners averred that respondent sought another employment with Tara Trading Shipmanagement, Inc. (for and in behalf of Amethyst Shipping Co.), on board *M/V* Luna Azul, for a period of twelve (12) months, with a basic monthly salary of US$967.00 at 48 hours of work weekly, overtime pay of US$535.00/month (US$6.24 per hour beyond 105 hours), and vacation leave with pay of 3 days a year (or US$98.00 a month), as evidenced by his Contract of Employment,[19] Seafarer Info-Sheet[20] and POEA Overseas Employment Certificate.[21]

On September 7, 1998, Acting Executive Labor Arbiter Pedro C. Ramos dismissed respondent's complaint for permanent and total disability benefits, sickness wages and all other claims and, likewise, petitioners' counterclaim for damages, for lack of merit. The labor arbiter found that petitioners have substantially complied with all their obligations to respondent under the POEA-approved employment contract. He debunked respondent's claim for permanent and total disability benefits because respondent had been duly proven and declared to be "fit to work" not only by the hospital of his choice, *i.e.*, Philippine General Hospital, but also by the Employees Compensation Commission (ECC); that respondent withdrew his claim during the pendency of the proceedings, although with reservation to re-file the same; and that respondent is now on board *M/V* Luna Azul on an overseas deployment. He upheld the validity of the Receipt and Quitclaim executed by respondent and stated that respondent had received reimbursement of his medical expenses in the amount ₱4,896.50. He declared that respondent is no longer entitled to sickness wages as it would amount to double recovery of benefits, as provided for under Paragraph 11, Section 4 of the POEA Standard Employment Contract.

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[18] *Id.* at 93-95.

[19] *Id.* at 96.

[20] *Id.* at 97.

[21] *Id.*

On May 25, 1999, the NLRC rendered a Decision which reversed and set aside the Decision of the labor arbiter. It ruled that respondent is entitled to sickness wages and to free medical and hospital treatment for the injury he sustained during the term of his contract, pursuant to Section C 4(b) and (c), Part II of the Standard Employment Contract Governing All Filipino Seamen On Board Ocean-Going Vessels, which obligates the employer to: (1) provide continuous medical treatment to the repatriated injured seaman until such time he is declared fit or the degree of his disability has been established by the company-designated physician; and (2) pay the injured seaman one hundred percent (100%) of his basic wages from the time he leaves the vessel for treatment until he is declared fit to work, but in no case shall this period exceed 120 days. The NLRC observed that petitioners cannot be considered to have adequately discharged their obligation in providing continuous treatment for respondent, as they failed to follow through their company-designated physician's recommendation, which required respondent to undergo a two-week confinement and physical therapy and, if the injury remains unresolved, for respondent to have surgical decompression. As a consequence, respondent was constrained to seek treatment and surgery from a doctor other than the company-designated physician. The NLRC also declared that respondent is entitled to sickness wages equivalent to 120 days in the amount of US$4,800.00, less the amount of US$1,010.00 which he had received, as full settlement of the claim from the petitioners, per Receipt and Quitclaim dated June 25, 1997, or a net total of US$3,790.00. However, the NLRC denied respondent's claim for compensatory damages, as the contractual benefit of sickness wages provided for under the Standard Contract is already a compensatory measure intended to assist the injured seaman during the term of his contract. The dispositive portion of the Decision reads:

WHEREFORE, the decision appealed from is hereby SET ASIDE. Respondents Varorient Shipping Co., Inc. and Aria Maritime Co., Ltd., are, jointly and severally, ordered to pay complainant Gil A. Flores the Philippine Peso equivalent at the time of actual payment of THREE THOUSAND SEVEN HUNDRED NINETY US DOLLARS

(US$3,790.00), plus THIRTEEN THOUSAND FIVE HUNDRED SEVENTY-NINE and 76/00 PESOS (₱13,579.76), representing the balance of the sickness wages and reimbursement of medical and surgical expenses.

All other claims are DISMISSED for lack of merit.

SO ORDERED.[22]

Both parties filed their respective motions for reconsideration. Petitioners sought exoneration from liability, while respondent averred that the NLRC erred in excluding certain items or receipts from the reimbursable medical expenses, deducting US$1,010.00 from the award of sickness wages, not holding petitioners liable for his entire wages up to the time he would be employed with another company, and not awarding him compensatory and moral damages and attorney's fees.

The NLRC denied respondent's motion for reconsideration in a Resolution dated June 30, 1999 and, likewise, petitioners' motion for reconsideration in its Resolution dated August 18, 1999.

On petition for review by petitioners, the CA affirmed the Decision dated May 25, 1999 and the Resolution dated August 18, 1999 of the NLRC with the following disposition:

WHEREFORE, the Decision of the National Labor Relations Commission dated May 25, 1999 is AFFIRMED with MODIFICATION. Petitioners Varorient Shipping Co., Inc. and Aria Maritime Co., Ltd., are, jointly and severally, ordered to pay private respondent Gil A. Flores:

1) the balance of sickness wages in the amount of US$3,790.00, or its peso equivalent at the time of actual payment; and

2) reimbursement of medical and surgical expenses in the total amount of ₱15,373.26, instead of ₱13,579.76.

All other claims are **DISMISSED** for lack of merit.[23]

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[22] *Rollo,* pp. 71-72.

[23] *Id.* at 48.

As the CA denied their motion for reconsideration in the Resolution dated January 29, 2004, petitioners filed this present petition.

Petitioners contend that respondent is not entitled to sickness wages, as this would be tantamount to unjust enrichment and double recovery on the part of respondent. They maintain that they had paid him US$1,010.00 as full payment of his salaries and benefits, including his medical treatment and, by reason thereof, respondent executed the Receipt and Quitclaim. They also claim that prior to his departure from the country and actual deployment overseas, respondent and his wife received financial accommodations in the form of cash advances, *i.e.*, US$1,000.00, per cash voucher dated April 16, 1997, signed by respondent; and US$2,790.00, per cash voucher dated April 21, 1997, signed by Crisanta Flores (wife of respondent), or the total amount of US$3,790.00. According to petitioners, since the amount of US$3,790.00 remained unpaid by respondent and his wife, therefore, they can properly offset the said amount with the sickness wages they would be paying to respondent.

Respondent denies that he and his wife were given cash advances while he was on board; that he had received the amount of US$1,010.00 from the petitioners as settlement of all his claims; and that the Receipt and Quitclaim dated June 25, 1997, allegedly executed by him, was a falsified document as the signature appearing therein was a forgery.

Contrary to petitioners' contention, respondent is entitled to sickness wages. The shooting pain on his right foot is an injury which he suffered during the course of his employment and, therefore, obligates petitioners to compensate him and provide him the appropriate medical treatment.

This is in consonance with the mandated provisions under Section 20 B (1), (2), (3), (4), and (5) of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels,[24] pursuant to Department Order

[24] This is the revised version of the "Standard Employment Contract Governing the Employment of All Filipino Seamen On Board Ocean-Going Vessels" of

No. 4, series of 2000, of the Department of Labor and Employment (by then Secretary Bienvenido E. Laguesma), adopted on May 31, 2000, which provides that:

SECTION 20. COMPENSATION AND BENEFITS

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment, as well as board and lodging, until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work, or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return, except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer

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1989 and the "Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels," per Department of Labor and Employment Department Order No. 33, Series of 1996, (approved by the POEA and effective on January 1, 1997) and POEA Memorandum Circular No. 055-96, issued by Administrator Felicisimo O. Joson, Jr. and adopted on December 16, 1996.

to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work, but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

On June 21, 1997, respondent was repatriated to the Philippines and declared fit to work on November 7, 1997, or a total period of 141 days. Applying the said provisions of the Standard Contract, respondent is entitled to receive sickness wages, covering the maximum period of 120 days, or the amount of US$4,800.00. The NLRC, as affirmed by the CA, found that petitioners are liable to pay respondent the total amount of US$3,790.00 (US$4,800.00 less the amount of US$1,010.00 which he already received by virtue of the Receipt and Quitclaim dated June 25, 1997).

As pointed out by the CA, petitioners, in their motion for reconsideration of the NLRC Decision dated May 25, 1999, raised for the first time that they had given the amount of US$3,790.00 to respondent and belatedly submitted two (2) cash vouchers, *i.e.*, US$1,000.00, dated April 16, 1997, which was signed by respondent; and US$2,290.00, dated April 21, 1997, which was signed by respondent's wife Cristina Flores,

or a total of US$3,790.00. The CA observed that the said cash vouchers do not bear the name and logo of petitioners, unlike the check voucher they issued for the reimbursement of the medical expenses of respondent amounting to ₱4,896.50, and that these vouchers were supposedly already in existence or in the possession of the petitioners since April 1997, but they never interposed such fact in their pleadings, *e.g.*, Position Paper, Supplement to Respondent's Position Paper, or Opposition to Complainant's Appeal. The Court sees no reason to disturb this factual finding.

Moreover, petitioners were remiss in providing continuous treatment for respondent in accordance with the recommendation of their company physician that respondent should undergo a two-week confinement and physical therapy and, if his condition does not improve, then he would have to be subjected to surgical decompression to alleviate the pain on his right foot. Respondent's ailment required urgent medical response, thereby necessitating him to seek immediate medical attention, even at his own expense. The CA enumerated the medical expenses of respondent for which petitioner would be liable. Thus,

> [w]hile we agree substantially with the NLRC's decision in allowing the reimbursement of ₱13,579.76, we disagree with its findings that the receipts for medicines were not covered by prescriptions. Dr. Irene Igual recommended the continued use of neo-pyrozon, ne[u]robin, and myonal [and], thus, respondent should accordingly be reimbursed for the purchase of these medicines. The records disclose the following purchases:
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> | | | | |
> |---|---|---|---|
> | 1. | Mercury Drug Receipt No. 535112 | | (Annex "F") |
> | | Myonal | - ₱97.50 | |
> | | Neo-pyrozon | - 71.50 - | ₱169.00 |
> | 2. | Mercury Drug Receipt No. 532746 | | (Annex "F-1") |
> | | Ne[u]robin | - ₱76.00 | |
> | | Myonal | - 97.50 - | ₱173.50 |
> | 3. | Mercury Drug Receipt No. 533708 | | (Annex "F-2") |
> | | Neo-pyrazon | - ₱71.50 | |
> | | Neurobin | - 76.00 | |
> | | Myonal | - 97.50 - | ₱244.00 |
> | 4. | Mercury Drug Receipt No. 251929 | | (Annex "F-3") |
> | | Pyrazon | - ₱71.50 - | ₱71.50 |

5.	Mercury Drug Receipt No. 251931		(Annex "F-4")
	Myonal	- ₱97.50	- ₱97.50
6.	Mercury Drug Receipt No. 534528		(Annex "F-5")
	Neo Pyrozon	- ₱71.50	
	Myonal	- 97.50	- ₱169.00
7.	Mercury Drug Receipt No. 253117		(Annex "F-6")
	Myobal	- ₱97.50	
	Neo-Pyrozon	- 71.50	- ₱169.00
	TOTAL	-	₱1,093.50

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In the same vein, receipt numbers 630 and 0091, issued by the offices of Dr. Betty Dy Mancao (Annex "F-40") and Dr. Copernico J. Villaruel (Annex "F-39") for ₱300.00 and ₱400.00, respectively, should be reimbursed to Flores. The PGH hospital bills do not include the doctors' fee, thus, it is safe to conclude that the doctors who attended to Flores billed him personally. x x x

x x x x x x x x x

In fine, private respondent is entitled to reimbursement of his medical expenses totalling ₱15,373.26.[25]

In view of the foregoing, respondent should be reimbursed the amount of ₱13,579.76, representing the balance of the sickness wages due him, the cost of the prescribed medicines he purchased, and the surgical expenses he incurred, as evaluated by the CA.

Petitioners argue that the Receipt and Quitclaim sufficed to cover the balance of the sickness wages, after deducting the cash advances, which respondent would be entitled to; while respondent questions the veracity of the said document.

The Receipt and Quitclaim executed by respondent lacks the elements of voluntariness and free will and, therefore, does not absolve petitioners from liability in paying him the sickness wages and other monetary claims.

Although respondent avers that his signature on the said quitclaim was a forgery, the CA relied on the factual findings

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[25] *Rollo,* pp. 43-45.

of the labor arbiter and the NLRC that gave credence to it. Thus, the matter to be resolved would be whether the Receipt and Quitclaim can be considered substantial compliance to the contractual obligation by petitioners under the standard employment contract.

In *More Maritime Agencies, Inc. v. NLRC*,[26] the Court ruled that the law does not consider as valid any agreement to receive less compensation than what a worker is entitled to recover nor prevent him from demanding benefits to which he is entitled. Quitclaims executed by the employees are thus commonly frowned upon as contrary to public policy and ineffective to bar claims for the full measure of the worker's legal rights, considering the economic disadvantage of the employee and the inevitable pressure upon him by financial necessity. Thus, it is never enough to assert that the parties have voluntarily entered into such a quitclaim. There are other requisites, to wit: (a) that there was no fraud or deceit on the part of any of the parties; (b) that the consideration of the quitclaim is credible and reasonable; and (c) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.

A perusal of the provisions of the Receipt and Quitclaim shows that respondent would be releasing and discharging petitioners from all claims, demands, causes of action, and the like in an all-encompassing manner, including the fact that he had not contracted or suffered any illness or injury in the course of his employment and that he was discharged in good and perfect health. These stipulations clearly placed respondent in a disadvantageous position *vis-á-vis* the petitioners.

WHEREFORE, the petition is *DENIED*. The Decision dated February 28, 2003 and the Resolution dated January 29, 2004 of the Court of Appeals in CA-G.R. SP No. 55512, which affirmed with modification the Decision dated May 25, 1999 and Resolution dated August 18, 1999 of the National Labor Relations Commission, are *AFFIRMED*.

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[26] 366 Phil. 646, 653-654 (1999).

SO ORDERED.

Velasco, Jr.,[*] *Nachura (Acting Chairperson),*[**] *Mendoza,* and *Sereno,*[***] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 163091. October 6, 2010]

COCA-COLA BOTTLERS PHILIPPINES, INC., *petitioner, vs.* **ANGEL U. DEL VILLAR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AMENDMENT UNDER SC CIRCULAR NO. 56-2000; WHERE A MOTION FOR RECONSIDERATION OR NEW TRIAL IS TIMELY FILED, THE SIXTY (60) DAY PERIOD FOR FILING A PETITION FOR *CERTIORARI* SHALL BE COUNTED FROM NOTICE OF THE DENIAL OF THE SAID MOTION.— While CA-G.R. SP No. 53815 was pending before the Court of Appeals, Section 4 of Rule 65 of the Rules of Court was amended anew by Supreme Court Circular No. 56-2000, which took effect on September 1, 2000, to read: Sec. 4. *When and where petition filed*. — The petition shall be filed **not later than sixty (60) days from notice of the judgment, order or resolution**. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the **sixty (60) day period shall be counted**

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[*] Designated as an additional member in lieu of Senior Associate Justice Antonio T. Carpio, per Special Order No. 897, dated September 28, 2010.

[**] Per Special Order No. 898, dated September 28, 2010.

[***] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 903, dated September 28, 2010.

from notice of the denial of the said motion. The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in the aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals. No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. It is clear that under Supreme Court Circular No. 56-2000, in case a motion for reconsideration of the judgment, order, or resolution sought to be assailed has been filed, the 60-day period to file a petition for *certiorari* shall be computed from notice of the denial of such motion.

2. ID.; ID.; ID.; ID.; ID.; RETROACTIVE APPLICATION OF THE AMENDED RULE, PROPER; CASE AT BAR.— **[**W]hether Supreme Court Circular No. 56-2000 should be applied retroactively to Del Villar's Petition in CA-G.R. SP No. 53815, We answer affirmatively. As we explained in *Perez v. Hermano:* Under this amendment, the 60-day period within which to file the petition starts to run from receipt of notice of the denial of the motion for reconsideration, if one is filed. In *Narzoles v. National Labor Relations Commission* [G.R. No. 141959, 29 September 2000, 341 SCRA 533-538], we described this latest amendment as curative in nature as it remedied the confusion brought about by Circular No. 39-98 because, "historically, *i.e.*, even before the 1997 revision to the Rules of Civil Procedure, a party had a fresh period from receipt of the order denying the motion for reconsideration to file a petition for *certiorari*." Curative statutes, which are enacted to cure defects in a prior law or to validate legal proceedings which would otherwise be void for want of conformity with certain legal requirements, by their very essence, are retroactive and, being a procedural rule, we held in *Sps. Ma. Carmen and Victor Javellana v. Hon. Presiding Judge Benito Legarda* (G.R. No. 139067, 23 November 2004] that "procedural laws are construed to be applicable to actions

pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent." In the instant case, Del Villar filed a Motion for Reconsideration of the NLRC Decision dated February 26, 1999. Del Villar received a copy of the NLRC Resolution dated April 26, 1999, denying his Motion for Reconsideration, on May 21, 1999. As already settled by jurisprudence, Del Villar had a fresh period of 60 days from May 21, 1999 within which to file his Petition for *Certiorari* before the Court of Appeals. Keeping in mind the rule that in computing a period, the first day shall be excluded and the last day included, exactly 60 days had elapsed from May 21, 1999 when Del Villar filed his Petition with the appellate court on July 20, 1999. Hence, without a doubt, Del Villar's Petition for *Certiorari* in CA-G.R. SP No. 53815 was seasonably filed.

3. ID.; APPEALS; ONLY LEGAL ISSUES ALLOWED; EXCEPTIONS; WHERE THERE IS DIVERGENCE IN THE FINDINGS AND CONCLUSIONS OF THE LABOR TRIBUNAL AND THAT OF THE COURT OF APPEALS.— It is a settled rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality. Moreover, in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the Supreme Court reviews only errors of law and not errors of facts. However, where there is divergence in the findings and conclusions of the NLRC, on the one hand, from those of the Labor Arbiter and the Court of Appeals, on the other, the Court is constrained to examine the evidence, to determine which findings and conclusion are more conformable with the evidentiary facts. Hence, in the instant Petition, we embark on addressing not only the legal, but the factual issues as well.

4. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; MANAGEMENT PREROGATIVE, RESPECTED; ON CHANGE OF ASSIGNMENTS OR TRANSFER OF AREA.— Jurisprudence recognizes the exercise of management prerogative. For this reason, courts often decline to interfere in legitimate business decisions of employers. In fact, labor laws discourage interference in employers' judgment concerning the conduct of their business. In the pursuit of its legitimate business interest, management

has the prerogative to transfer or assign employees from one office or area of operation to another – provided there is no demotion in rank or diminution of salary, benefits, and other privileges; and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them.

5. ID.; ID.; ID.; ID.; LIMITATION OF MANAGERIAL PREROGATIVE ON TRANSFER OF EMPLOYEES.— Managerial prerogatives, however, are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice. In the case of *Blue Dairy Corporation v. National Labor Relations Commission*, we described in more detail the limitations on the right of management to transfer employees: But, like other rights, there are limits thereto. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay. Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.

6. ID.; ID.; ID.; ID.; TRANSFER, DISTINGUISHED FROM PROMOTION AND DEMOTION.— A *transfer* is a movement from one position to another which is of equivalent rank, level or salary, without break in service. *Promotion*, on the other hand, is the advancement from one position to another with an

increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary. Conversely, *demotion* involves a situation where an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary. x x x In *Globe Telecom, Inc. v. Florendo-Flores*, we found that there was a demotion in rank even when the respondent therein continued to enjoy the rank of a supervisor, but her function was reduced to a mere house-to-house or direct sales agent.

7. ID.; ID.; CONSTRUCTIVE DISMISSAL; WHEN PRESENT.— There is constructive dismissal when there is a demotion in rank and/or diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee.

8. ID.; ID.; DISMISSAL OF EMPLOYEE; GROUNDS; REDUNDANCY GOVERNED BY ART. 283, LABOR CODE, ON CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL.— Redundancy is one of the authorized causes for the dismissal of an employee. It is governed by Article 283 of the Labor Code. x x x Redundancy, for purposes of the Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise. The determination that the employee's services are no longer necessary or sustainable and, therefore, properly terminable for being redundant is an exercise of business judgment of the employer. The wisdom or soundness of this judgment is not subject to discretionary review of the Labor Arbiter and the NLRC, provided there is no violation of law and no showing that it was prompted by an arbitrary or malicious act. In other words, it is not enough for a company to merely declare that it has become overmanned. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees.

9. ID.; ID.; ID.; ID.; ID.; EVIDENCE OF REDUNDANCY.—We mentioned in *Panlilio v. National Labor Relations Commission* that an employer may proffer "new staffing pattern, feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring" as evidence of redundancy. We further explained in *AMA Computer College Inc. v. Garcia* what constitutes substantial evidence of redundancy: ACC attempted to establish its streamlining program by presenting its new table of organization. ACC also submitted a certification by its Human Resources Supervisor, Ma. Jazmin Reginaldo, that the functions and duties of many rank and file employees, including the positions of Garcia and Balla as Library Aide and Guidance Assistant, respectively, are now being performed by the supervisory employees. These, however, do not satisfy the requirement of substantial evidence that a reasonable mind might accept as adequate to support a conclusion. As they are, they are grossly inadequate and mainly self-serving. **More compelling evidence would have been a comparison of the old and new staffing patterns, a description of the abolished and newly created positions, and proof of the set business targets and failure to attain the same which necessitated the reorganization or streamlining.** x x x Redundancy arises because there is no more need for the employee's position in relation to the whole business organization, and not because the employee unsatisfactorily performed the duties and responsibilities required by his position.

10. ID.; ID.; ILLEGAL DISMISSAL; ILLEGALLY DISMISSED EMPLOYEE ENTITLED TO BOTH FULL BACKWAGES AND REINSTATEMENT; DISCUSSED.— An employee who is illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay is awarded to the employee. 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. Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no

longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision.

11. ID.; ID.; ID.; MORAL AND EXEMPLARY DAMAGES, PROPER.— Award of moral and exemplary damages for an illegally dismissed employee is proper where the employee had been harrassed and arbitrarily terminated by the employer. Moral damages may be awarded to compensate one for diverse injuries such as mental anguish, besmirched reputation, wounded feelings, and social humiliation occasioned by the employer's unreasonable dismissal of the employee. We have consistently accorded the working class a right to recover damages for unjust dismissals tainted with bad faith; where the motive of the employer in dismissing the employee is far from noble. The award of such damages is based not on the Labor Code but on Article 220 of the Civil Code. These damages, however, are not intended to enrich the illegally dismissed employee, such that, after deliberations, we find the amount of ₱100,000.00 for moral damages and ₱50,000.00 for exemplary damages sufficient to assuage the sufferings experienced by Del Villar and by way of example or correction for the public good.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioner.

Misa Law Offices for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Petitioner Coca-Cola Bottlers Philippines, Inc. (the Company) filed this Petition for Review on *Certiorari*, under Rule 45 of the Rules of Court, seeking the reversal of (1) the Decision[1] dated October 30, 2003 of the Court of Appeals in CA-G.R. SP No. 53815, which reversed and set aside the Decision[2] dated

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[1] *Rollo*, pp. 158-173; penned by Presiding Justice Cancio C. Garcia with Associate Justices Renato C. Dacudao and Danilo B. Pine, concurring.

[2] *Id.* at 89-100.

February 26, 1999 of the National Labor Relations Commission (NLRC) in NLRC CN. NCR-00-12-07634-96; and (2) the Resolution[3] dated March 29, 2004 of the appellate court in the same case, which denied for lack of merit the Motion for Reconsideration of the Company.

The antecedent facts are as follows:

The Company, one of the leading and largest manufacturers of beverages in the country, initially hired respondent Angel U. del Villar (Del Villar) on May 1, 1990 as Physical Distribution Fleet Manager with a job grade of S-7 and monthly salary of ₱50,000.00, aside from the use of a company car, gasoline allowance, and annual foreign travel, among other benefits. In 1992, as part of the reorganization of the Company, Del Villar became the Transportation Services Manager, under the Business Logistic Directorate, headed by Director Edgardo I. San Juan (San Juan). As Transportation Services Manager, Del Villar prepares the budget for the vehicles of the Company nationwide.

While serving as Transportation Services Manager, Del Villar submitted a Report dated January 4, 1996 to the Company President, Natale J. Di Cosmo (Di Cosmo), detailing an alleged fraudulent scheme undertaken by certain Company officials in conspiracy with local truck manufacturers, overpricing the trucks purchased by the Company by as much as ₱70,000.00 each. In the same Report, Del Villar implicated San Juan and Jose L. Pineda, Jr. (Pineda), among other Company officials, as part of the conspiracy. Pineda then served as the Executive Assistant in the Business Logistic Directorate in charge of the Refrigeration Services of the Company.

In 1996, the Company embarked on a reorganization of the Business Logistic Directorate. As a result, the functions related to Refrigeration were assigned to the Transportation Services Manager, which was renamed the Transportation and Refrigeration Services Manager. Mr. Nathaniel L. Evangelista, the Physical Distribution Superintendent of the Zamboanga Plant,

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[3] *Id.* at 190-193.

was appointed the Corporate Transportation and Refrigeration Services Manager, replacing both Del Villar and Pineda, who were in charge of the Transportation Services and Refrigeration Services of the Company, respectively. Pineda was then appointed as the Corporate Purchasing and Materials Control Manager, while Del Villar as Pineda's Staff Assistant. These new appointments took effect on May 1, 1996.[4]

On July 8, 1996, seven months after the submission of his Report on the fraudulent scheme of several company officials, Del Villar received a Memorandum[5] from San Juan. Through said Memorandum, San Juan informed Del Villar that (1) Del Villar was designated as Staff Assistant to the Corporate Purchasing and Materials Control Manager, with a job grade of NS-VII; (2) with Del Villar's new assignment, he ceased to be entitled to the benefits accruing to an S-7 position under existing company rules and policies; and (3) Del Villar was to turn over the vehicle assigned to him as Transportation Services Manager to Pineda by July 10, 1996.

Although as the Staff Assistant of the Corporate Purchasing and Materials Control Manager, Del Villar continued to receive the same salary as Transportation Services Manager, but his car and other privileges were withdrawn and he spent his time at his new post sitting "at a desk with no meaningful work whatsoever."[6] Del Villar believed that he was demoted by the Company to force him to resign. Unable to endure any further the harassment, Del Villar filed with the Arbitration Branch of the NLRC on November 11, 1996 a complaint against the Company for illegal demotion and forfeiture of company privileges. Del Villar also impleaded in his complaint Company President Di Cosmo, Vice-President and General Manager Jaime G. Oracion (Oracion), Senior Vice-President and Human Resources Director Rosa Maria Chua (Chua), San Juan, and Pineda. The complaint

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[4] CA *rollo*, p. 53.

[5] *Id.* at 57.

[6] *Id.* at 51.

was docketed as NLRC CN. NCR-00-12-07634-96, assigned to Labor Arbiter Felipe Pati.

The Company failed to appear, despite due notice, at the scheduled preliminary conference before the NLRC Arbitration Branch.

Del Villar filed his Position Paper, supported by his Complaint Affidavit.

The Company filed a Motion to Dismiss, instead of a position paper, praying for the dismissal of Del Villar's complaint on the ground that Del Villar had no cause of action. The Company reasoned that in appointing Del Villar as the Staff Assistant of the Corporate Purchasing and Materials Control Manager, from his former position as Transportation Services Manager, the Company was merely exercising its inherent management prerogative to transfer an employee from one position to another. The Company also contended that Del Villar had no vested right to the privileges he previously enjoyed as Transportation Services Manager. In an Order dated July 24, 1997, the Labor Arbiter deferred action on the Motion to Dismiss until after submission by the Company of its Position Paper within 15 days from receipt of said order.

The Company filed on October 13, 1997 a Manifestation in which it stated that it was adopting its Motion to Dismiss as its Position Paper.

Thereafter, NLRC CN. NCR-00-12-07634-96 was submitted for resolution.

On March 3, 1998, the Labor Arbiter rendered a Decision in Del Villar's favor. The Labor Arbiter held that the allegations in Del Villar's complaint sufficiently presented a cause of action against the Company. The Company, in filing a Motion to Dismiss, hypothetically admitted the truth of the facts alleged in the complaint, and the failure of the Company to deny or rebut Del Villar's allegations of bad faith on the part of the Company, gave rise to the presumption against the latter.

The Labor Arbiter proceeded to rule:

The issue as to whether or not [the Company] acted illegally in demoting [Del Villar] is, therefore, answered in the affirmative.

This office is inclined to believe and so holds that the reorganization of [the Company] appears to have been done sans the necessary requisite of good faith, after [Del Villar] had filed his complaint to the company President detailing the scam involving the purchase of the truck fleet of 1996.

[Del Villar] was not outrightly dismissed; instead, he was removed from his former position as Transportation Services Manager, and demoted to Staff Assistant to the Corporate Purchasing and Materials Control Manager. Furthermore, as "Staff Assistant" [Del Villar] allegedly receives his usual salary but his car privileges, gasoline allowances, and foreign travel were withdrawn and he now sits at a desk "with no meaningful work whatsoever."

[Del Villar] appears to have been singled out or discriminated upon due to his having reported the 1996 truck scam, and his present isolation can be seen as a punishment for acting in a righteous and forthright manner. Otherwise, as a "Staff Assistant" [Del Villar] should have been given some meaningful or responsible work appurtenant to the job designation.

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This Office finds and so holds that in all the foregoing rulings, the concept of management prerogative is limited or otherwise qualified. Procedurally and substantively, [the Company] through its named officers appears to have acted illegally and in bad faith in its purported "reorganization", in demoting [Del Villar] and in removing [Del Villar's] company privileges.

Had [Del Villar] resigned under the circumstances, he could be said to have been constructively discharged because a constructive discharge is defined as "a quitting because continued employment is rendered impossible, unreasonable and unlikely, as an offer involving demotion in rank and a diminution in pay". (*Philippine Japan Active Carbon Corporation and Tukuichi Satofuka vs. NLRC*, G.R. 83239, Mar. 1989).[7]

For demoting Del Villar without justifiable cause, the Labor Arbiter ruled that the Company was liable for the following:

[7] *Rollo*, pp. 62-65.

As a consequence of [the Company's] acts [Del Villar] suffered the effects of humiliation, a besmirched reputation, serious anxiety and sleepless nights which justify an award of moral damages.

In order to serve as an example to other companies who may be so inclined as to emulate [the Company's] act of punishing their employee's honesty and sense of fair play, [the Company] must per force be assessed exemplary damages.

In order to protect and vindicate his rights under the Labor Code, [Del Villar] was constrained to retain counsel for which [the Company] should be assessed attorney's fees of not less than ten percent (10%) of the awarded sum.

In the matter of the unlawful withdrawal of [Del Villar's] car, gasoline allowance and foreign travel by [the Company], it is obligated to rectify the withdrawal of privileges by returning to [Del Villar] the said Toyota car, and if that is not possible, its value as of the time said car was withdrawn including the value of the gasoline allowance and foreign travel due him.[8]

In the end, the Labor Arbiter decreed:

WHEREFORE, premises considered judgment is hereby rendered against [the Company and the impleaded Company officials] and in favor of [Del Villar] ordering [the Company] to (1) reinstate [Del Villar] to his former job level; (2) to return the car to [Del Villar] or to compensate [Del Villar] for the loss of his privileges such as the value of the Toyota car as of the time of taking including the value of the gasoline allowance and the foreign travel due [Del Villar]; (3) indemnify [Del Villar] moral damages of ₱1,000,000.00 Pesos and exemplary damages of ₱1,000,000.00 Pesos, aside from attorney's fees of 10% of sums herein awarded.[9]

The Company expectedly appealed to the NLRC.

While the case was still pending appeal before the NLRC, Del Villar received a letter dated April 28, 1998, signed by one Virgilio B. Jimeno for the Company, which read:

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[8] *Id.* at 65-66.

[9] *Id.* at 66.

Dear Mr. Del Villar:

Presently, the Company is implementing various programs to ensure the accomplishment of its corporate goals and objectives, and to increase the productivity of its workforce.

Since the various programs will affect some of its employees, the Company has initiated a special program called "Project New Start". This program is intended to assist employees whose positions will be declared redundant with the implementation of new distribution systems, utilization of improved operational processes and functional re-organizations.

Your position has been determined as no longer necessary due to the reorganization of the Business Logistics Directorate. The Transportation and Refrigeration Services Department of the Technical Operations Directorate has absorbed your function and our efforts to transfer you to a similar position within the organization have not been successful. Thus, you are considered separated from [the Company] effective May 31, 1998.

Thank you for your kind understanding. We wish you success and God's blessings in all your future undertakings.[10]

In a Decision dated February 26, 1999, the NLRC reversed the Labor Arbiter, reasoning that:

Contrary to the Labor Arbiter's pronouncement that [the Company] should have rebutted allegations of bad faith and malice, we are more inclined to apply the presumption of good faith. Mere conclusions of fact and law should not be used as bases for an automatic finding of bad faith. As it is, we do not even see any disclosure of the scam and his alleged demotion. If indeed the so-called "great grandmother of Coca cola scams of 1996" were true, the logical consequence of such disclosure is for the president of the company to dismiss the erring employees and officers for their highly irregular acts and not to penalize [Del Villar] for making such disclosure. This is amply supported by the fact that the [the Company] conducted a thorough investigation of the reported scam and even obtained the services of an independent auditor to determine whether the alleged anomalous transactions were actually irregular and/or questionable. This manifests that [Del Villar's] disclosure was taken seriously

[10] CA *rollo*, p. 130.

contrary to his claims of discrimination. Accordingly, it cannot be said that the act of the [Company] was retaliatory or penal in nature nor tainted with bad faith and/or malice. Otherwise, [the Company] would not have given grave attention to the disclosure of [Del Villar].

On the issue of whether there was a demotion, we are of the view that it was improper to conclude that [Del Villar's] movement from the position of Transportation Services Manager to Staff Assistant to the Corporate Purchasing and Materials Control Manager necessarily indicated a demotion. The records show that there was no diminution of salary. While it appears that his transportation benefits were withheld, it does not follow that his position as Staff Assistant is inferior to that of a Transportation Services Manager. We take notice of the fact that certain positions in a company involve traveling from one place to another, hence the necessity to provide for a car, and related benefits like allowances for gasoline and maintenance. A company cannot, however, be reasonably expected to provide the same benefits to an employee whose position for example, requires that he stays in the office during working hours. Benefits, privileges and perquisites that attach to a certain position do not provide sufficient bases for determining the superiority or inferiority of the position so held.[11]

Hence, the NLRC concluded:

In fine We find that [Del Villar] was not demoted and that the [Company] has not acted in bad faith or with malice.

WHEREFORE, in view of the foregoing, the Decision dated March 3, 1998 rendered by Labor Arbiter Felipe R. Pati is hereby REVERSED and SET ASIDE and a new one rendered DISMISSING the complaint for lack of merit.[12]

Del Villar moved for the reconsideration of the foregoing NLRC Decision, but the NLRC denied such motion for lack of merit in a Resolution dated April 26, 1999.[13]

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[11] *Rollo,* pp. 96-98.

[12] *Id.* at 100.

[13] *Id.* at 117-118.

Unsatisfied, Del Villar brought his case before the Court of Appeals *via* a Petition for *Certiorari* under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 53815.

On October 30, 2003, the Court of Appeals promulgated its Decision favoring Del Villar. According to the Court of Appeals, the NLRC committed grave abuse of discretion by turning a blind eye on several indicia that clearly showed Del Villar was demoted without any lawful reason: (1) the very nomenclature used by the Company designating Del Villar's new job: from Transportation Services Manager, Del Villar was suddenly designated as staff assistant to another manager; (2) the diminution in the benefits being enjoyed by Del Villar prior to his transfer, such as the use of the company car, gasoline allowance, and annual foreign travel; and (3) Del Villar's new post in the Company did not require him to perform any meaningful work, a far cry from his previous responsibilities as Transportation Services Manager which include the preparation of the budget of the Company for all of its vehicles nationwide.

The Court of Appeals also made a finding of bad faith against the Company:

> It is true that Labor Arbiters cannot dictate business owners on how to run their enterprises. Concededly, employers and their managers have all the leeway to make the necessary adjustments in their organizations. But the prerogative is not absolute. It must be accompanied by good faith. x x x.
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> x x x x x x x x x
>
> We have reasonable ground to believe that the reorganization theory poised by [the Company] was a mere afterthought. If indeed [Del Villar] was a casualty of a valid reorganization, officials of [the Company] could have easily told him in the several memos they issued to [Del Villar]. Edgardo San Juan, in a memo dated April 29, 1996, merely informed [Del Villar] the name of his replacement as Transportation Services Manager (*Rollo*, p. 53). In his second memo dated May 8, 1996, San Juan informed [Del Villar] that he would be *"under the direct supervision of Mr. Jose L. Pineda, Jr. until an assignment, if any, would have been determined"* for [Del Villar].

Two (2) subsequent memos were received by [Del Villar] but still no hint on the reason behind his relief. Rosa Marie Chua, in a memo dated June 11, 1996, simply ordered [Del Villar] to return the company car (*Rollo*, p. 56). Again, Chua sent a memo dated June 17, 1996, telling [Del Villar] that the car was part of "*perquisites*" of a Transportation Services Manager and must be returned as he was already relieved of his position (*Rollo*, 56).

In all four (4) memos, officials of [the Company] never once attributed to company reorganization as the reason behind [Del Villar's] relief as Transportation Services Manager. Instead, [the Company] waited for [Del Villar] to file a complaint before it declared publicly its reason for relieving him from his post.

It is unfortunate enough for [the Company] to give San Juan, the very person charged by [Del Villar] of committing fraud against the company, the free hand to deal with his accuser. And whatever remains of [the Company's] tattered claim to good faith towards [Del Villar] evaporated by its absence of forthrightness to the latter. [The Company's] lack of candor clearly lends support to a conclusion that [Del Villar's] relief was occasioned by a reason alien to an alleged company reorganization. The evidence presented by [Del Villar] tend to show that he was demoted, not because of company reorganization, but because of his authorship of the report about the fraud being committed by certain officials of [the Company].[14]

Just like the Labor Arbiter, the Court of Appeals held the Company liable for the following but in reduced amounts:

Albeit We are inclined to reinstate the **decision dated March 3, 1998** of the Labor Arbiter, We feel, however, that the amount of moral and exemplary damages thereunder awarded to [Del Villar] to the tune of ₱1 million each was excessive. To Our mind, the liability of [the Company] is mitigated when it continued providing [Del Villar] despite his demotion with the salary he was receiving as ***Transportation Services Manager***. The moral and exemplary damages should thus be reduced to the reasonable amount of ₱500,000.00, for each item.[15]

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[14] *Id.* at 169-171.

[15] *Id.* at 172.

The dispositive portion of the assailed Decision of the appellate court stated:

WHER[E]FORE, the instant petition is hereby ***GRANTED***. Accordingly, the assailed **Decision dated February 26, 1999** and **Resolution dated April 26, 1999** of the National Labor Relations Commission are hereby ***SET ASIDE***. Subject to the modification reducing to ₱500,000.00 the amount of moral damages and to ₱500,000.00 the amount of exemplary damages, the **decision dated March 3, 1998 of the Labor Arbiter** is hereby ***REINSTATED***.[16]

Del Villar filed on November 20, 2003 a Motion for Partial Reconsideration of the above-mentioned decision of the appellate court, praying for the award of backwages to be reckoned from May 31, 1998, the day he had been dropped from the payroll. The Company also moved for the reconsideration of the same judgment, asserting, among other arguments, that Del Villar's Petition for *Certiorari* in CA-G.R. SP No. 53815, was filed out of time and should have been dismissed.

In its Resolution dated March 29, 2004, the Court of Appeals denied the Motions for Reconsideration of both parties for lack of merit.[17]

In this Petition for Review, the Company raises three grounds for consideration of this Court:

A. THE HONORABLE COURT OF APPEALS GAVE DUE COURSE TO THE PETITION DESPITE THE FACT THAT IT WAS CLEARLY FILED BEYOND THE REGLEMENTARY PERIOD PRESCRIBED BY LAW.

B. THE HONORABLE COURT OF APPEALS GAVE DUE COURSE TO THE [Court of Appeals] PETITION DESPITE THE FACT THAT [Del Villar] FAILED TO ESTABLISH THAT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN RENDERING THE 26 FEBRUARY 1999 DECISION AND 26 APRIL 1999 RESOLUTION.

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[16] *Id*.

[17] *Id.* at 190-193.

C. THE HONORABLE COURT OF APPEALS EFFECTIVELY DIRECTED [Del Villar's] REINSTATEMENT TO HIS FORMER JOB LEVEL DESPITE ITS IMPOSSIBILITY SINCE HE HAD ALREADY BEEN VALIDLY SEPARATED FROM SERVICE.[18]

The Company avers that the Court of Appeals erred in giving due course to Del Villar's Petition for *Certiorari* in CA-G.R. SP No. 53815 as the said remedy was filed out of time. Rule 65, Section 4 of the Rules of Court, as amended by Supreme Court Circular No. 39-98 on September 1, 1998, provided:

> Sec. 4. *Where and when petition to be filed*. — The petition may be filed **not later than sixty (60) days from notice of the judgment, order or resolution** sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the *Sandiganbayan* if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.
>
> If the petitioner had filed a **motion for new trial or reconsideration** in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition **within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial.** No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Emphases ours.)

The Company points out that Del Villar received a copy of the NLRC Decision dated February 26, 1999 on **March 17, 1999**. Twelve days later, on **March 29, 1999**, Del Villar filed a Motion for Reconsideration, thus, interrupting the 60-day reglementary period for filing a petition for *certiorari*. The

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

NLRC denied Del Villar's Motion for Reconsideration in a Resolution dated April 26, 1999, a copy of which Del Villar received on **May 21, 1999**. From May 21, 1999, Del Villar only had 48 days more, or until July 8, 1999, within which to file his petition for *certiorari*; but he only did so 60 days later, on **July 20, 1999**. Clearly, Del Villar's Petition for *Certiorari* in CA-G.R. SP No. 53815 was filed 12 days late and way beyond the reglementary period as provided under the Rules of Court.

We do not agree.

While CA-G.R. SP No. 53815 was pending before the Court of Appeals, Section 4 of Rule 65 of the Rules of Court was amended anew by Supreme Court Circular No. 56-2000, which took effect on September 1, 2000, to read:

> Sec. 4. *When and where petition filed.* — The petition shall be filed **not later than sixty (60) days from notice of the judgment, order or resolution**. In case a **motion for reconsideration or new trial** is timely filed, whether such motion is required or not, the **sixty (60) day period shall be counted from notice of the denial of the said motion**.
>
> The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in the aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.
>
> No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (Emphases ours.)

It is clear that under Supreme Court Circular No. 56-2000, in case a motion for reconsideration of the judgment, order, or resolution sought to be assailed has been filed, the 60-day period to file a petition for *certiorari* shall be computed from notice of the denial of such motion.

The crucial question now is whether Supreme Court Circular No. 56-2000 should be applied retroactively to Del Villar's Petition in CA-G.R. SP No. 53815.

We answer affirmatively. As we explained in *Perez v. Hermano*[19]:

> Under this amendment, the 60-day period within which to file the petition starts to run from receipt of notice of the denial of the motion for reconsideration, if one is filed.
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> In *Narzoles v. National Labor Relations Commission* [G.R. No. 141959, 29 September 2000, 341 SCRA 533-538], we described this latest amendment as curative in nature as it remedied the confusion brought about by Circular No. 39-98 because, "historically, *i.e.*, even before the 1997 revision to the Rules of Civil Procedure, a party had a fresh period from receipt of the order denying the motion for reconsideration to file a petition for *certiorari*." Curative statutes, which are enacted to cure defects in a prior law or to validate legal proceedings which would otherwise be void for want of conformity with certain legal requirements, by their very essence, are retroactive and, being a procedural rule, we held in *Sps. Ma. Carmen and Victor Javellana v. Hon. Presiding Judge Benito Legarda* [G.R. No. 139067, 23 November 2004] that "procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent."[20]

In the instant case, Del Villar filed a Motion for Reconsideration of the NLRC Decision dated February 26, 1999. Del Villar received a copy of the NLRC Resolution dated April 26, 1999, denying his Motion for Reconsideration, on May 21, 1999. As already settled by jurisprudence, Del Villar had a fresh period of 60 days from May 21, 1999 within which to file his Petition for *Certiorari* before the Court of Appeals. Keeping in mind the rule that in computing a period, the first day shall be excluded and the last day included,[21] exactly 60 days had elapsed from May 21, 1999 when Del Villar filed his Petition with the appellate

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[19] 501 Phil. 397 (2005).

[20] *Id.* at 404.

[21] Article 13, Civil Code of the Philippines.

court on July 20, 1999. Hence, without a doubt, Del Villar's Petition for *Certiorari* in CA-G.R. SP No. 53815 was seasonably filed.

We now turn our attention to the merits of the case.

The Company asserts that the Court of Appeals should not have issued a writ of *certiorari* in Del Villar's favor as there was no grave abuse of discretion on the part of the NLRC in finding that Del Villar was not demoted and that the Company had not acted in bad faith or with malice.

The issue of whether the Company, in transferring Del Villar from the position of Transportation Services Manager to Staff Assistant to the Corporate Purchasing and Materials Control Manager, validly exercised its management prerogative or committed constructive dismissal, is a factual matter. It is a settled rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality. Moreover, in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the Supreme Court reviews only errors of law and not errors of facts. However, where there is divergence in the findings and conclusions of the NLRC, on the one hand, from those of the Labor Arbiter and the Court of Appeals, on the other, the Court is constrained to examine the evidence,[22] to determine which findings and conclusion are more conformable with the evidentiary facts. Hence, in the instant Petition, we embark on addressing not only the legal, but the factual issues as well.

Jurisprudence recognizes the exercise of management prerogative. For this reason, courts often decline to interfere in legitimate business decisions of employers. In fact, labor laws discourage interference in employers' judgment concerning the conduct of their business.[23]

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[22] *Philippine Long Distance Telephone Company, Inc. v. Tiamson*, G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761, 770-771.

[23] *Philippine Industrial Security Agency Corporation v. Aquinaldo*, 499 Phil. 215, 225 (2005).

In the pursuit of its legitimate business interest, management has the prerogative to transfer or assign employees from one office or area of operation to another – provided there is no demotion in rank or diminution of salary, benefits, and other privileges; and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them.[24]

Managerial prerogatives, however, are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice.[25] In the case of *Blue Dairy Corporation v. National Labor Relations Commission*,[26] we described in more detail the limitations on the right of management to transfer employees:

> But, like other rights, there are limits thereto. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay. Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable

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[24] *Mendoza v. Rural Bank of Lucban*, G.R. No. 155421, July 7, 2004, 433 SCRA 756, 766.

[25] *The Philippine American Life and General Insurance Co. v. Gramaje*, G.R. No. 156963, November 11, 2004, 442 SCRA 274, 288.

[26] 373 Phil. 179 (1999).

to the employee leaving him with no option but to forego with his continued employment.[27]

In the case at bar, there is no dispute that Del Villar was transferred by the Company from the position of Transportation Services Manager to the position of Staff Assistant to the Corporate Purchasing and Materials Control Manager. The burden thus falls upon the Company to prove that Del Villar's transfer was not tantamount to constructive dismissal. After a careful scrutiny of the records, we agree with the Labor Arbiter and the Court of Appeals that the Company failed to discharge this burden of proof.

The Company and its officials attempt to justify the transfer of Del Villar by alleging his unsatisfactory performance as Transportation Services Manager. In its Petition, the Company disclosed that:

> 4.1. As Transportation Services Manager, [Del Villar] displayed an utterly woeful performance. He was unable to submit basic data as to type and brand of vehicles with highest/lowest maintenance cost as requested. [Del Villar] could not even update the records of his office. He never complied with his commitments on submission of reports and his claims of the availability of such reports were never substantiated.
>
> 4.2. [Del Villar] could not work with minimum or no supervision. His activities needed to be closely and constantly monitored by his superiors. [Del Villar] lacked initiative and had to be constantly reminded of what to do. The work he performed and/or submitted, more often than not, had to be redone. In his Performance and Potential Evaluation Sheet for 1995, [Del Villar] merited a mediocre grade of 2 in a scale of one (1) to five (5), the latter number being the highest grade. Copies of the Affidavit of Edgardo I. San Juan ["San Juan"], the Company's then Business Logistic Director, and respondent's Performance and Potential Evaluation Sheet for 1995 are attached as Annexes "B" and "C", respectively.[28]

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[27] *Id.* at 186.

[28] *Rollo*, pp. 5-6.

San Juan averred in his Affidavit that Del Villar was inept and incompetent as Transportation Services Manager; and was even more unqualified to take over the new position of Transportation and Refrigeration Services Manager, which involved additional functions related to Refrigeration. It was for this reason that Del Villar was transferred to the position of Staff Assistant to the Corporate Purchasing and Materials Control Manager.

In his Counter-Affidavit submitted before the NLRC, Pineda, the Corporate Purchasing and Materials Control Manager, claimed that:

> 3. As his evaluation would show, Mr. del Villar was not a well-motivated employee. He could not perform his job well and promptly with minimum or no supervision and follow-up from his superiors. He repeatedly failed to observe the deadlines which I set for the submission of his reports and often procrastinates. His work product likewise suffered from accuracy and thoroughness. Despite several admonitions and guidance from me as his immediate superior, he simply refused to change his work attitude.[29]

We are unconvinced. The dismal performance evaluations of Del Villar were prepared by San Juan and Pineda after Del Villar already implicated his two superiors in his Report dated January 4, 1996 in an alleged fraudulent scheme against the Company. More importantly, we give weight to the following instances establishing that Del Villar was not merely **transferred** from the position of Transportation Services Manager to the position of Staff Assistant to the Corporate Purchasing and Materials Control Manager; he was evidently **demoted**.

A *transfer* is a movement from one position to another which is of equivalent rank, level or salary, without break in service. *Promotion*, on the other hand, is the advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary. Conversely, *demotion* involves a situation where an

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[29] *Id.* at 39.

employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary.[30]

First, as the Court of Appeals observed, Del Villar's demotion is readily apparent in his new designation. Formerly, he was the **Transportation Services Manager**; then he was made a **Staff Assistant** — a subordinate — to another manager, particularly, the Corporate Purchasing and Materials Control Manager.

Second, the two posts are not of the same weight in terms of duties and responsibilities. Del Villar's position as Transportation Services Manager involved a high degree of responsibility, he being in charge of preparing the budget for all of the vehicles of the Company nationwide. As Staff Assistant of the Corporate Purchasing and Materials Control Manager, Del Villar contended that he was not assigned any meaningful work at all. The Company utterly failed to rebut Del Villar's contention. It did not even present, at the very least, the job description of such a Staff Assistant. The change in the nature of work resulted in a degrading work condition and reduction of duties and responsibility constitute a demotion in rank. In *Globe Telecom, Inc. v. Florendo-Flores*,[31] we found that there was a demotion in rank even when the respondent therein continued to enjoy the rank of a supervisor, but her function was reduced to a mere house-to-house or direct sales agent.

Third, while Del Villar's transfer did not result in the reduction of his salary, there was a diminution in his benefits. The Company admits that as Staff Assistant of the Corporate Purchasing and Materials Control Manager, Del Villar could no longer enjoy the use of a company car, gasoline allowance, and annual foreign travel, which Del Villar previously enjoyed as Transportation Services Manager.

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[30] *Tinio v. Court of Appeals*, G.R. No. 171764, June 8, 2007, 524 SCRA 533, 541.

[31] *Id.*

Fourth, it was not bad enough that Del Villar was demoted, but he was even placed by the Company under the control and supervision of Pineda as the latter's Staff Assistant. To recall, Pineda was one of the Company officials who Del Villar accused of defrauding the Company in his Report dated January 4, 1996. It is not too difficult to imagine that the working relations between Del Villar, the accuser, and Pineda, the accused, had been strained and hostile. The situation would be more oppressive for Del Villar because of his subordinate position *vis-à-vis* Pineda.

Fifth, all the foregoing caused Del Villar inconvenience and prejudice, so unbearable for him that he was constrained to seek remedy from the NLRC. The Labor Arbiter was correct in his observation that had Del Villar resigned immediately after his "transfer," he could be said to have been constructively dismissed. There is constructive dismissal when there is a demotion in rank and/or diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee.[32]

Eventually, however, the Company actually terminated Del Villar's services effective May 31, 1998, as his position was no longer necessary or was considered redundant due to the reorganization of the Business Logistic Directorate.

Redundancy is one of the authorized causes for the dismissal of an employee. It is governed by Article 283 of the Labor Code, which reads:

ART. 283. **Closure of establishment and reduction of personnel**. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date

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[32] *Dusit Hotel Nikko v. National Union of Workers in Hotel, Restaurant and Allied Industries (NUWHRAIN)-Dusit Hotel Nikko Chapter*, 503 Phil. 980, 995 (2005).

thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Redundancy, for purposes of the Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise.[33]

The determination that the employee's services are no longer necessary or sustainable and, therefore, properly terminable for being redundant is an exercise of business judgment of the employer. The wisdom or soundness of this judgment is not subject to discretionary review of the Labor Arbiter and the NLRC, provided there is no violation of law and no showing that it was prompted by an arbitrary or malicious act. In other words, it is not enough for a company to merely declare that it has become overmanned. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees.[34]

We mentioned in *Panlilio v. National Labor Relations Commission*[35] that an employer may proffer "new staffing pattern,

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[33] *San Miguel Corporation v. Del Rosario*, G.R. No. 168194, December 13, 2005, 477 SCRA 604, 614.

[34] *AMA Computer College, Inc. v. Garcia*, G.R. No. 166703, April 14, 2008, 551 SCRA 254, 264.

[35] 346 Phil. 30, 34 (1997).

feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring" as evidence of redundancy. We further explained in *AMA Computer College Inc. v. Garcia*[36] what constitutes substantial evidence of redundancy:

> ACC attempted to establish its streamlining program by presenting its new table of organization. ACC also submitted a certification by its Human Resources Supervisor, Ma. Jazmin Reginaldo, that the functions and duties of many rank and file employees, including the positions of Garcia and Balla as Library Aide and Guidance Assistant, respectively, are now being performed by the supervisory employees. These, however, do not satisfy the requirement of substantial evidence that a reasonable mind might accept as adequate to support a conclusion. As they are, they are grossly inadequate and mainly self-serving. **More compelling evidence would have been a comparison of the old and new staffing patterns, a description of the abolished and newly created positions, and proof of the set business targets and failure to attain the same which necessitated the reorganization or streamlining**.[37] (Emphases ours.)

In this case, other than its own bare and self-serving allegation that Del Villar's position as Staff Assistant of Corporate Purchasing and Materials Control Manager had already become redundant, no other evidence was presented by the Company. Neither did the Company present proof that it had complied with the procedural requirement in Article 283 of prior notice to the Department of Labor and Employment (DOLE) of the termination of Del Villar's employment due to redundancy one month prior to May 31, 1998. The notice to the DOLE would have afforded the labor department the opportunity to look into and verify whether there is truth as to the claim of the Company that Del Villar's position had become redundant "with the implementation of new distribution systems, utilization of improved operational processes, and functional reorganization" of the Company. Compliance with the required notices would have

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[36] *Supra* note 34.

[37] *Id.* at 265.

also established that the Company abolished Del Villar's position in good faith.[38]

Del Villar's poor employee performance is irrelevant as regards the issue on redundancy. Redundancy arises because there is no more need for the employee's position in relation to the whole business organization, and not because the employee unsatisfactorily performed the duties and responsibilities required by his position.[39]

There being no authorized cause for the termination of Del Villar's employment, then he was illegally dismissed.

An employee who is illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay is awarded to the employee. 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.[40] Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision. We note that Del Villar's reinstatement is no longer possible because the position he previously occupied no longer exists, per San Juan's Affidavit dated October 15, 1998.[41] Also, Del Villar had already received his separation pay sometime in October 1998.[42]

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[38] *Id*.

[39] *Id*.

[40] *General Milling Corporation v. Casio and Pino*, G.R. No. 149552, March 10, 2010; *Mt. Carmel College v. Resuena*, G.R. No. 173076, October 10, 2007, 535 SCRA 518, 541.

[41] *Rollo*, p. 32.

[42] *Id.* at 7.

Because of his unjustified dismissal, we likewise award in Del Villar's favor moral and exemplary damages. Award of moral and exemplary damages for an illegally dismissed employee is proper where the employee had been harrassed and arbitrarily terminated by the employer. Moral damages may be awarded to compensate one for diverse injuries such as mental anguish, besmirched reputation, wounded feelings, and social humiliation occasioned by the employer's unreasonable dismissal of the employee. We have consistently accorded the working class a right to recover damages for unjust dismissals tainted with bad faith; where the motive of the employer in dismissing the employee is far from noble. The award of such damages is based not on the Labor Code but on Article 220 of the Civil Code.[43] These damages, however, are not intended to enrich the illegally dismissed employee, such that, after deliberations, we find the amount of ₱100,000.00 for moral damages and ₱50,000.00 for exemplary damages sufficient to assuage the sufferings experienced by Del Villar and by way of example or correction for the public good.

WHEREFORE, premises considered, the instant petition is *DENIED* for lack of merit. The Decision dated October 30, 2003 and Resolution dated March 29, 2004 of the Court of Appeals in CA-G.R. SP No. 53815 are hereby *AFFIRMED* with the following *MODIFICATIONS*: 1) the amount of backwages shall be computed from the date of Del Villar's illegal dismissal until the finality of this judgment; and 2) the amount of moral and exemplary damages are reduced to ₱100,000.00 and ₱50,000.00, respectively. For this purpose, the case is hereby *REMANDED* to the Labor Arbiter for the computation of the amounts due Angel U. del Villar.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Del Castillo, and *Perez, JJ.,* concur.

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[43] *Cruz v. National Labor Relations Commission*, 381 Phil. 775, 790 (2000).

THIRD DIVISION

[G.R. No. 168313. October 6, 2010]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **HON. COURT OF APPEALS, HON. ROMEO BARZA, in his capacity as the Presiding Judge of the Regional Trial Court of Makati City, Br. 61, FIRST UNION GROUP ENTERPRISES and LINDA WU HU,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; VERIFICATION OF COMPLAINT AND ATTACHMENT OF NON-FORUM SHOPPING AS MANDATORY PROCEDURAL REQUIREMENT; LIBERAL APPLICATION THEREOF REQUIRES SUFFICIENT JUSTIFICATION.— This Court has repeatedly emphasized the need to abide by the Rules of Court and the procedural requirements it imposes. The verification of a complaint and the attachment of a certificate of non-forum shopping are requirements that — as pointed out by the Court, time and again — are basic, necessary and mandatory for procedural orderliness. x x x While we may have excused strict compliance in the past, we did so only on sufficient and justifiable grounds that compelled a liberal approach while avoiding the effective negation of the intent of the rule on non-forum shopping. In other words, the rule for the submission of a certificate of non-forum shopping, *proper in form and substance*, remains to be a strict and mandatory rule; any liberal application has to be justified by ample and sufficient reasons that maintain the integrity of, and do not detract from, the mandatory character of the rule.

2. ID.; ID.; ID.; FAILURE TO COMPLY WITH THE FORMAL REQUIREMENTS OF PLEADINGS WARRANTS DISMISSAL OF THE CASE.— Under the circumstances, what applies to the present case is the second paragraph of Section 5, Rule 7 of the Rules of Court which states: Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case **without prejudice**,

> unless otherwise provided, upon motion and after hearing. We thus hold that the dismissal of the case is the appropriate ruling from this Court, without prejudice to its refiling as the Rules allow. We end this Decision by quoting our parting words in *Melo v. Court of Appeals*: We are not unmindful of the adverse consequence to private respondent of a dismissal of her complaint, nor of the time, effort, and money spent litigating up to this Court solely on a so-called technical ground. Nonetheless, we hold that compliance with the certification requirement on non-forum shopping should not be made subject to a party's afterthought, lest the policy of the law be undermined.

APPEARANCES OF COUNSEL

Benedicto Verzosa Felipe & Burkley Law Offices for petitioner.

Lacierda & Bermudez for private respondents.

D E C I S I O N

BRION, *J.*:

Through the present petition for review on *certiorari*,[1] petitioner Bank of the Philippine Islands (*BPI)* seeks the reversal of: (1) the Court of Appeals (*CA*) decision of November 2, 2004,[2] in *"Bank of the Philippine Islands v. Hon. Romeo Barza, et al."* docketed as CA-G.R. SP No. 75350 and (2) the CA resolution of May 25, 2005[3] denying BPI's Motion for Reconsideration. The assailed CA ruling affirmed the Order of the Regional Trial Court (*RTC*) of Makati City, Branch 61 dated August 26, 2002,[4] granting First Union Group Enterprises (*First Union*) and Linda

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[1] Filed under Rule 45 of the Rules of Court, *rollo* p. 9.

[2] *Id.* at 40; penned by Associate Justice Josefina Guevara-Salonga; concurred in by Associate Justices Roberto A. Barrios and Lucas P. Bersamin, now a member of the Court.

[3] *Id.* at 48.

[4] *Id.* at 131.

Wu Hu's (*Linda*) Motion to Dismiss dated March 26, 2002. A subsequent Motion for Reconsideration was likewise denied.[5]

THE FACTUAL ANTECEDENTS

First Union borrowed from BPI the sums of Five Million Pesos (PhP5,000,000.00) and One Hundred Twenty-Three Thousand and Two Hundred Eighteen U.S. Dollars and 32 cents (USD123,218.32), evidenced by separate promissory notes.[6]

As partial security for the loan obligations of First Union, defendant Linda and her spouse (Eddy Tien) executed a Real Estate Mortgage Agreement dated August 29, 1997,[7] covering two (2) condominium units. Linda executed a Comprehensive Surety Agreement dated April 14, 1997[8] where she agreed to be solidarily liable with First Union for its obligations to BPI.

Despite repeated demands to satisfy the loan obligations upon maturity, First Union failed to pay BPI the amounts due.

On October 16, 2000, BPI initiated with the Office of the Sheriff of the RTC of Pasig extra-judicial foreclosure proceedings against the two (2) mortgaged condominium units to satisfy First Union and Linda's solidary obligations.

After due notice and publication, the properties were sold at public auction on June 29, 2001.[9] BPI was the highest bidder, having submitted a bid of Five Million Seven Hundred Ninety-Eight Thousand Four Hundred Pesos (PhP5,798,400.00). The proceeds of the auction sale were applied to the costs and expenses of foreclosure, and thereafter, to First Union's obligation of Five Million Pesos (PhP5,000,000.00). After so applying the proceeds, First Union still owed BPI a balance of Four Million

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[5] The RTC denied the subsequent Motion for Reconsideration on November 13, 2002, *id.* at 162.

[6] *Id.* at 78-91.

[7] *Id.* at 186.

[8] *Id.* at 182.

[9] *Id.* at 192-194.

Seven Hundred Forty Two Thousand Nine Hundred Forty Nine & 32/100 Pesos (PhP4,742,949.32), inclusive of interests and penalty charges, as of December 21, 2001.[10] Additionally, First Union's foreign currency loan obligation remained unpaid and, as of December 21, 2001, amounted to One Hundred Seventy Five Thousand Three Hundred Twenty Four & 35/100 US Dollars (USD175,324.35), inclusive of interest and penalty charges.

The Complaint for Collection of Sum of Money

First Union's and Linda's continued failure to settle their outstanding obligations prompted BPI to file, on January 3, 2002, a complaint for collection of sum of money with the RTC of Makati City, Branch 61.[11] The complaint's verification and certificate of non-forum shopping were signed by Ma. Cristina F. Asis (*Asis)* and Kristine L. Ong (*Ong)*. **However, no Secretary's Certificate or Board Resolution was attached to evidence Asis' and Ong's authority to file the complaint.**

On April 1, 2002, First Union and Linda filed a motion to dismiss[12] on the ground that BPI violated Rule 7, Section 5 of the Rules of Civil Procedure (*Rules)*; BPI failed to attach to the complaint the necessary board resolution authorizing Asis and Ong to institute the collection action against First Union and Linda.[13]

On August 7, 2002, BPI filed an "Opposition to the Motion to Dismiss,"[14] arguing that the verification and certificate of non-forum shopping sufficiently established Asis' and Ong's authority to file the complaint and proof of *their authority could be presented during the trial*. Further, BPI alleged that a

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[10] According to the Complaint, *id.* at 74.

[11] *Id.* at 72-77.

[12] *Id.* at 108-110.

[13] *Id*.

[14] *Id.* at 113-116.

complaint "can only be dismissed under Section 5, Rule 7 of the 1997 Rules of Civil Procedure if there was no certification against forum shopping." The provision, according to BPI, "does not even require that the person certifying should show proof of his authority to do so."[15]

Instead of submitting a board resolution, BPI attached a "Special Power of Attorney" (*SPA*) dated December 20, 2001 executed by Zosimo A. Kabigting (*Zosimo*), Vice-President of BPI.[16] The SPA authorized Asis and Ong or any lawyer from the Benedicto Versoza Gealogo and Burkley Law Offices to initiate any legal action against First Union and Linda.

In their Comment[17] to BPI's Opposition, First Union and Linda challenged BPI's reading of the law, charging that it lacked jurisprudential support.[18] First Union and Linda argued, invoking *Public Estates Authority v. Elpidio Uy*,[19] that "an initiatory pleading which does not contain a board resolution authorizing the person to show proof of his authority is equally guilty (*sic*) of not satisfying the requirements in the Certification against Non-Forum Shopping. It is as if though *(sic)* no certification has been filed."[20] Thus, according to First Union and Linda, BPI's failure to attach a board resolution "shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for dismissal of the case without prejudice x x x."[21] First Union and Linda likewise questioned the belated submission of the SPA, which in any case, "is not the board resolution envisioned by the rules since the plaintiff herein is a juridical person."[22]

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

[16] *Id.* at 117.

[17] Dated August 14, 2002, *id.* at 208.

[18] *Id.* at 119.

[19] G.R. Nos. 147933-34, December 12, 2001, 372 SCRA 180.

[20] *Rollo,* p. 120.

[21] *Id.* at 121.

[22] *Id*.

BPI's Reply[23] to the Comment argued that the cited *Public Estates Authority* case is not authoritative since "what is proscribed is the absence of authority from the board of directors, not the failure to attach the board resolution to the initiatory pleading."[24] BPI contended that the "primary consideration is whether Asis and Ong were authorized by BPI, not the failure to attach the proof of authority to the complaint."[25] BPI also begged the "kind indulgence of the Honorable Court as it *inadvertently failed to submit* with the Special Power of Attorney the Corporate Secretary's Certificate which authorized Mr. Zosimo Kabigting to appoint his substitutes."[26]

On August 22, 2002, the RTC issued its assailed Order[27] granting First Union's and Linda's Motion to Dismiss.[28] The trial court denied BPI's Motion for Reconsideration[29] on November 13, 2002.[30]

Proceedings before the CA

BPI, on February 5, 2003, filed a petition for *certiorari*[31] under Rule 65 of the Rules of Court before the CA. It alleged that that lower court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the complaint despite the submission of the SPA and the Corporate Secretary's Certificate.[32]

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[23] Dated August 20, 2002, *id.* at 124.

[24] *Id*.

[25] *Id*.

[26] *Id.* at 125.

[27] *Id.* at 131-133.

[28] *Id.* at 133.

[29] Dated September 23, 2002, *id.* at 134-137.

[30] *Id.* at 141.

[31] *Id.* at 142-154.

[32] *Id.* at 147-152.

In their Comment to the petition,[33] First Union and Linda submitted that the petition is an improper remedy since an order granting a motion to dismiss is not interlocutory. They contended that the dismissal is final in nature; hence, an appeal, not a petition for *certiorari* under Rule 65, is the proper recourse.

The CA disagreed with First Union and Linda's contention. The assailed order, according to the CA, categorically stated that the dismissal of the complaint was without prejudice.[34] As a dismissal without prejudice, the order is interlocutory in nature and is not a final order.[35]

The CA, however, found that BPI failed to comply with the procedural requirements on non-forum shopping.[36] Citing Sec. 5, Rule 7 of the Rules of Court, the CA ruled that the requirement that a petitioner should sign the certificate of non-forum shopping applies even to corporations since the Rules of Court do not distinguish between natural and civil persons.[37] *Digital Microwave Corp. v. Court of Appeals, et al.*[38] holds that "where a petitioner is corporation, the certification against forum shopping should be signed by its duly authorized director or representative."

While the CA did not question the authority of Asis and Ong as bank representatives, the Bank however failed to show — through an appropriate board resolution — proof of their authority as representatives. To the CA, this failure warranted the dismissal of the complaint.[39]

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[33] *Id.* at 233-241.

[34] *Id.* at 42.

[35] *Id.* at 42-43, citing Sec. 1, Rule 41, RULES OF COURT and *Casapunan v. Laroya,* G.R. No. 145391, August 26, 2002, 388 SCRA 28.

[36] *Id.* at 43.

[37] *Id.* at 44, citing *Zulueta v. Asia Brewery*, G.R. No. 138137, March 8, 2001, 354 SCRA 100.

[38] G.R. No. 128550, March 16, 2000, 328 SCRA 286.

[39] *Rollo,* p. 45.

The CA lastly refused to accord merit to BPI's argument that it substantially complied with the requirements of verification and certification; BPI only submitted the SPA and the Board Resolution after it had filed the complaint.[40]

THE PETITIONER'S ARGUMENTS

BPI maintains in the present petition that it attached a verification and certificate of non-forum shopping to its complaint. Contesting the CA's interpretation of *Shipside v. Court of Appeals*,[41] it argues that the Supreme Court actually excused Shipside's belated submission of its Secretary's Certificate and held that it substantially complied with the rule requiring the submission of a verification and certificate of non-forum shopping as it did, in fact, make a submission. From this starting point, it now asks the Court to excuse its belated submission.[42]

BPI likewise contends that it is in a better position than the petitioner in *Shipside* because the latter only submitted a secretary's certificate while it submitted a special power of attorney signed by Zosimo. On this same point, BPI also cites *General Milling Corporation v. National Labor Relations Commission*[43] where the Court held that General Milling's belated submission of a document to prove the authority of the signatories to the verification and certificate of non-forum shopping was substantial compliance with Rules of Court.

BPI finally urges the Court to reverse and set aside the Decision of the CA and to remand the case to the RTC of Makati City for further proceedings under the principle that "technicality should not defeat substantial justice."[44]

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[40] *Id*.

[41] February 20, 2001, G.R. No. 143377, 352 SCRA 334.

[42] *Rollo,* p. 22.

[43] G. R. No. 153199, December 17, 2002, 394 SCRA 207.

[44] *Rollo,* pp. 28-29.

THE RESPONDENT'S ARGUMENTS

In their Memorandum dated September 25, 2009,[45] First Union and Linda allege that BPI's "position on the submission of the Board Resolution has been one of defiance."[46] BPI's failure to submit the required board resolution is not an inadvertence but a wilful disregard of the Rules and a blatant refusal to heed the order of the RTC. First Union and Linda point to BPI's opposition to the Motion to Dismiss as proof of BPI's wilful disregard. BPI argued in this opposition that (1) the Rules do not require the presentation of a board resolution, and (2) proof of such authority need not be attached to the initiatory pleading but can be presented during trial.[47]

Further, instead of submitting a board resolution, BPI submitted a special power of attorney.[48] It was only after First Union and Linda pointed out that the submitted special power of attorney cannot bind a juridical entity did BPI change its position. Only then did BPI claim that it merely *inadvertently* failed to submit the required secretary's certificate.[49]

This belated change of position, according to First Union and Linda, does not entitle BPI to the jurisprudential exception established by the Court in *Shipside* where the Court held that the relaxation of the rule requiring verification and certification of non-forum shopping is only for "special circumstances or compelling reasons."[50]

THE COURT'S RULING

We rule in the respondents' favor.

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[45] *Id.* at 401-409.

[46] *Id.* at 403.

[47] *Id.* at 404.

[48] *Id*.

[49] *Id.* at 405.

[50] *Id*.

This Court has repeatedly emphasized the need to abide by the Rules of Court and the procedural requirements it imposes. The verification of a complaint and the attachment of a certificate of non-forum shopping are requirements that — as pointed out by the Court, time and again — are basic, necessary and mandatory for procedural orderliness.

Thus, we cannot simply and in a general way apply — given the factual circumstances of this case — the liberal jurisprudential exception in *Shipside* and its line of cases to excuse BPI's failure to submit a board resolution. While we may have excused strict compliance in the past, we did so only on sufficient and justifiable grounds that compelled a liberal approach while avoiding the effective negation of the intent of the rule on non-forum shopping. In other words, the rule for the submission of a certificate of non-forum shopping, *proper in form and substance*, remains to be a strict and mandatory rule; any liberal application has to be justified by ample and sufficient reasons that maintain the integrity of, and do not detract from, the mandatory character of the rule.

The rule, its relaxation and their rationale were discussed by the Court at length in *Tible & Tible Company, Inc. v. Royal Savings and Loan Association*[51] where we said:

> Much reliance is placed on the rule that "*Courts are not slaves or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on balance, technicalities take a backseat against substantive rights, and not the other way around.*" This rule must always be used in the right context, lest injustice, rather than justice would be its end result.
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> It must never be forgotten that, generally, the application of the rules must be upheld, and the suspension or even mere relaxation of its application, is the exception. This Court previously explained:
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> > The Court is not impervious to the frustration that litigants and lawyers alike would at times encounter in procedural

[51] G.R. No. 155806, April 08, 2008, 550 SCRA 562, 580-581.

bureaucracy but imperative justice requires ***correct observance of indispensable technicalities precisely designed to ensure its proper dispensation***. It has long been recognized that strict compliance with the Rules of Court is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business.

Procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. Adjective law is important in ensuring the effective enforcement of substantive rights through the orderly and speedy administration of justice. These rules are not intended to hamper litigants or complicate litigation but, indeed to provide for a system under which a suitor may be heard in the correct form and manner and at the prescribed time in a peaceful confrontation before a judge whose authority they acknowledge.

It cannot be overemphasized that procedural rules have their own wholesome rationale in the orderly administration of justice. Justice has to be administered according to the Rules in order to obviate arbitrariness, caprice, or whimsicality. We have been cautioned and reminded in *Limpot v. Court of Appeals, et al.,* that:

> Rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings. It is a mistake to propose that substantive law and adjective law are contradictory to each other or, as often suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly true; the concept is much misunderstood. As a matter of fact, the policy of the courts is to give both kinds of law, as complementing each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive rights is equally guaranteed by due process, whatever the source of such rights, be it the Constitution itself or only a statute or a rule of court.
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> x x x x x x x x x
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> x x x (T)hey are required to be followed except only when for the most persuasive of reasons they may be relaxed

> to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. x x x While it is true that a litigation is not a game of technicalities, this does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. Justice eschews anarchy.

In particular, on the matter of the certificate of non-forum shopping that was similarly at issue, *Tible*[52] pointedly said:

> x x x the requirement under Administrative Circular No. 04-94 for a certificate of non-forum shopping is mandatory. The **subsequent compliance with said requirement does not excuse a party's failure to comply therewith in the first instance**. In those cases where this Court excused the non-compliance with the requirement of the submission of a certificate of non-forum shopping, it found **special circumstances** or **compelling reasons** which made the strict application of said Circular clearly unjustified or inequitable. x x x [Emphasis supplied.]

This same rule was echoed in *Mediserv v. Court of Appeals*[53] where we said in the course of allowing a liberal justification:

> It is settled that liberal construction of the rules may be invoked in situations where there may be **some excusable formal deficiency or error in a pleading**, provided that the same does not subvert the essence of the proceeding and connotes **at least a reasonable attempt at compliance with the rules**. After all, rules of procedure are not to be applied in a very rigid, technical sense; they are used only to help secure substantial justice. [Emphasis supplied.]

To be sure, BPI's cited *Shipside* case also involved the absence of proof — attached to the petition — that the filing officer was authorized to sign the verification and non-forum shopping certification. In the Motion for Reconsideration that followed the dismissal of the case, the movant attached a certificate issued by its board secretary stating that ten (10) days prior to the

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[52] *Id.* at 579.

[53] G.R. No. 161368, April 5, 2010.

filing of the petition, the filing officer had been authorized by petitioner's board of directors to file said petition. *Thus, proper authority existed but was simply not attached to the petition.* On this submission, the petitioner sought and the Court positively granted relief.

In the present case, we do not see a situation comparable to the cited *Shipside*. *BPI did not submit any proof of authority in the first instance because it did not believe that a board resolution evidencing such authority was necessary*. We note that instead of immediately submitting an appropriate board resolution — after the First Union and Linda filed their motion to dismiss — BPI argued that it was not required to submit one and even argued that:

> The Complaint can only be dismissed under Section 5, Rule 7 of the 1997 Rules of Civil Procedure if there was no certification against forum shopping. The Complaint has. The provision cited does not even require that the person certifying show proof of his authority to do so x x x.[54]

In fact, BPI merely attached to its opposition a special power of attorney issued by Mr. Kabigting, a bank vice-president, granting Asis and Ong the authority to file the complaint. Thus, no direct authority to file a complaint was initially ever given by BPI — *the corporate entity in whose name and behalf the complaint was filed*. Only in its Reply to the Comment to plaintiff's Opposition to the Motion to Dismiss did BPI "beg the kind indulgence of the Honorable Court as it *inadvertently* failed to submit with the Special Power of Attorney the Corporate Secretary's Certificate which authorized Mr. Zosimo Kabigting to appoint his substitutes."[55] Even this submission, however, was a roundabout way of authorizing the filing officers to file the complaint.

BPI, interestingly, never elaborated nor explained its belatedly claimed inadvertence in failing to submit a corporate secretary's certificate directly authorizing its representatives to file the

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[54] *Rollo,* pp. 203-204.

[55] *Id.* at 214.

complaint; it particularly failed to specify the circumstances that led to the claimed inadvertence. Under the given facts, we cannot but conclude that, rather than an inadvertence, there was an initial unwavering stance that the submission of a specific authority from the board was not necessary. In blunter terms, the omission of the required board resolution in the complaint was neither an excusable deficiency nor an omission that occurred through inadvertence. In the usual course in the handling of a case, the failure was a mistake of counsel that BPI never cared to admit but which nevertheless bound it as a client. From this perspective, BPI's case is different from *Shipside* so that the ruling in this cited case cannot apply.

Under the circumstances, what applies to the present case is the second paragraph of Section 5, Rule 7 of the Rules of Court which states:

> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case **without prejudice**, unless otherwise provided, upon motion and after hearing.

We thus hold that the dismissal of the case is the appropriate ruling from this Court, without prejudice to its refiling as the Rules allow.

We end this Decision by quoting our parting words in *Melo v. Court of Appeals*:[56]

> We are not unmindful of the adverse consequence to private respondent of a dismissal of her complaint, nor of the time, effort, and money spent litigating up to this Court solely on a so-called technical ground. Nonetheless, we hold that compliance with the certification requirement on non-forum shopping should not be made subject to a party's afterthought, lest the policy of the law be undermined.

WHEREFORE, we *DENY* the petitioner's petition for review on *certiorari*, and *AFFIRM* the decision dated November 2, 2004 of the Court of Appeals, in *Bank of the Philippine Islands*

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[56] G.R. No. 123686, November 16, 1999, 318 SCRA 94, 105.

v. Hon. Romeo Barza, et al. (CA-G.R. SP No. 75350), and the subsequent resolution dated May 25, 2005[57] denying BPI's Motion for Reconsideration. The complaint filed against the respondents is *DISMISSED* without prejudice. Costs against the petitioner.

SO ORDERED.

Carpio Morales, Del Castillo,[*] *Villarama, Jr.,* and *Sereno, JJ.,* concur.

THIRD DIVISION

[G.R. No. 169067. October 6, 2010]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ANGELO B. MALABANAN, PABLO B. MALABANAN, GREENTHUMB REALTY AND DEVELOPMENT CORPORATION and THE REGISTRAR OF DEEDS OF BATANGAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; MODES OF APPEAL FROM DECISIONS OF THE RTC.— In *Murillo v. Consul,* we had the opportunity to clarify the three (3) modes of appeal from decisions of the RTC, to wit: (1) by ordinary appeal or appeal by writ of error under Rule 41, where judgment was rendered in a civil or criminal action by the RTC in the exercise of original jurisdiction; (2) by petition for review under Rule 42, where judgment was rendered by the RTC in the exercise of appellate jurisdiction; and (3) by petition for review on *certiorari* to the Supreme Court under Rule 45. The first mode of appeal is taken to the CA on questions of fact or mixed questions of fact and law. The second mode of appeal

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[57] *Rollo,* p. 48.

[*] Designated Additional Member per Raffle dated October 4, 2010 with Associate Justice Lucas P. Bersamin who concurred in the assailed CA decision.

is brought to the CA on questions of fact, of law, or mixed questions of fact and law. The third mode of appeal is elevated to the Supreme Court only on questions of law.

2. ID.; ID.; ID.; QUESTION OF LAW DIFFERENTIATED FROM A QUESTION OF FACT.— In *Leoncio v. De Vera*, this Court has differentiated a question of law from a question of fact. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Glen G. Abellon for Greenthumb Realty Dev't. Corporation.
Pedro N. Belmi for Angelo and Pablo Malabanan.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeks to overturn the Resolution[1] dated July 20, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 70770 dismissing petitioner's appeal.

The facts are as follows:

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[1] *Rollo*, pp. 26-28. Penned by Associate Justice Ruben T. Reyes (now a retired member of this Court), with Associate Justices Bienvenido L. Reyes and Elvi John S. Asuncion concurring.

Respondents Angelo B. Malabanan and Pablo B. Malabanan were registered owners of a 405,000-square-meter parcel of land situated in Talisay, Batangas and covered by Transfer Certificate of Title (TCT) No. T-24268[2] of the Register of Deeds of Tanauan, Batangas. Said parcel of land was originally registered on April 29, 1936 in the Register of Deeds of Batangas under Original Certificate of Title (OCT) No. 0-17421[3] pursuant to Decree No. 589383[4] issued in L.R.C. Record No. 50573. OCT No. 0-17421 was cancelled and was replaced with TCT No. T-9076 from which respondent's title, TCT No. T-24268, was derived. The parcel of land was later subdivided into smaller lots resulting in the cancellation of TCT No. T-24268. The derivative titles are now either in the names of the Malabanans or respondent Greenthumb Realty and Development Corporation.

Petitioner Republic of the Philippines claims that in an investigation conducted by the Department of Environment and Natural Resources (Region IV), it was revealed that the land covered by TCT No. T-24268 was within the unclassified public forest of Batangas per L.C. CM No. 10. This prompted petitioner's filing of a complaint[5] for reversion and cancellation of title against respondents on March 30, 1998. The case was docketed as Civil Case No. T-1055 and raffled off to Branch 83 of the Regional Trial Court (RTC) of Batangas. The case was later re-docketed as Civil Case No. C-192.

On May 5, 1998, the Malabanans filed a Motion to Dismiss.[6] They argued that the complaint failed to state a cause of action; the court has no jurisdiction over the subject matter; the complaint violates Section 7,[7] Rule 8 of the 1997 Rules of Civil Procedure,

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[2] Records, p. 11.

[3] *Id.* at 12-13.

[4] *Id.* at 14-15.

[5] *Id.* at 1-10.

[6] *Id.* at 22-31.

[7] SEC. 7. *Action or defense based on document.*—Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall

as amended, since petitioner did not attach a copy of Decree No. 589383 of the Court of First Instance of Batangas, pursuant to which OCT No. 0-17421 was issued in LRC Record No. 50573; and that a similar complaint for reversion to the public domain of the same parcels of land between the same parties has already been dismissed by the same court.

In an Order[8] dated December 11, 1998, the trial court dismissed the complaint. The salient portions of the order read:

> A similar complaint for reversion to the public domain of the same parcels of land was filed with this Court on July 14, 1997 by plaintiff against defendants-movants. The case, docketed as Civil Case No. T-784, was dismissed on December 7, 1992 (sic) for lack of jurisdiction.
>
> As pointed out by movants, the nullification of Original Certificate of Title No. 0-17421 and all its derivative titles would involve the nullification of the judgment of the Land Registration Court which decreed the issuance of the title over the property. Therefore, the applicable provision of law is Section 9 (2) of Batas Pambansa Blg. 129 which vests upon the Court of Appeals exclusive jurisdiction over actions for annulment of judgments of the Regional Trial Court.
>
> Moreover, **this Court is aware, and takes judicial notice, of the fact that the parcels of land, subject of reversion had been the subject of several cases before this Court concerning the ownership and possession thereof by defendants-movants. <u>These cases were even elevated to the Court of Appeals and the Supreme Court which, in effect, upheld the ownership of the properties by defendants Malabanans</u>. Said decisions of this Court, the Court of Appeals, and the Supreme Court should then also be annulled**.[9] (Emphasis and underscoring supplied.)

On January 5, 1999, petitioner filed a Notice of Appeal[10] from the order of dismissal. On January 18, 1999, the Malabanans

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be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

[8] Records, pp. 85-86.

[9] *Id.*

[10] *Id.* at 90-91.

moved to deny due course and to dismiss appeal arguing that petitioner, in filing a notice of appeal, adopted an improper mode of appeal. The Malabanans contended that the issue of jurisdiction of the trial court over the complaint filed by petitioner is a question of law which should be raised before the Supreme Court via a petition for review on *certiorari* under Rule 45.[11]

On June 29, 1999, the trial court issued an Order[12] denying due course and dismissing petitioner's appeal. However, on *certiorari*,[13] docketed as CA-G.R. SP No. 54721, said order was reversed by the CA on February 29, 2000. The CA ruled that the determination of whether or not an appeal may be dismissed on the ground that the issue involved is purely a question of law is exclusively lodged within the discretion of the CA. Consequently, the trial court was directed to give due course to petitioner's appeal and order the transmittal of the original records on appeal to the CA.[14]

Petitioner, in its Appeal Brief[15] filed before the CA, raised this lone assignment of error:

THE COURT *A QUO* ERRED IN DISMISSING THE COMPLAINT ON THE GROUND OF LACK OF JURISDICTION.[16]

A perusal of the arguments in the brief reveals that not only did petitioner raise the jurisdictional issue, **it likewise questioned the portion of the dismissal order where it was held that several cases involving the subject land have already been filed and in those cases, the CA and the Supreme Court have upheld respondents' ownership. Petitioner argued that the question of whether the right of the Malabanans had,**

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[11] *Id.* at 93-96.

[12] *Id.* at 103-104.

[13] *Id.* at 107-120.

[14] *Id.* at 195-202.

[15] CA *rollo*, pp. 27-50.

[16] *Id.* at 38.

in fact, been upheld is factual in nature and necessarily requires presentation of evidence.[17]

On July 20, 2005, however, the CA issued the assailed Resolution dismissing petitioner's appeal, holding that the issue of jurisdiction, being a pure question of law, is cognizable only by the Supreme Court via a petition for review on *certiorari*. It dismissed petitioner's appeal under Section 2,[18] Rule 50 of the 1997 Rules of Civil Procedure, as amended.

Before us, petitioner raises the sole issue of:

WHETHER THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN DISMISSING PETITIONER'S APPEAL FOR BEING THE WRONG MODE TO ASSAIL THE TRIAL COURT'S ORDER.[19]

Petitioner argues that the issue surrounding the validity of the order dismissing the complaint does not only involve a question of law but also involves a question of fact. The question of fact pertains to the portion of the trial court's assailed order which stated that the Malabanans' ownership had been upheld by the CA and the Supreme Court. Petitioner contends that the question of whether such right had in fact been upheld is factual in nature. Petitioner adds that the trial court has jurisdiction over the complaint and should not have dismissed the complaint in the first place.

Respondents, on the other hand, counter that there are no factual issues involved because they are deemed to have

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[17] *Id.* at 46-47.

[18] SEC. 2. *Dismissal of improper appeal to the Court of Appeals.* — An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

[19] *Rollo*, p. 15.

hypothetically admitted the truth of the facts alleged in the complaint when they filed a motion to dismiss.

The petition is meritorious.

In *Murillo v. Consul*,[20] we had the opportunity to clarify the three (3) modes of appeal from decisions of the RTC, to wit: (1) by ordinary appeal or appeal by writ of error under Rule 41,[21] where judgment was rendered in a civil or criminal action by the RTC in the exercise of original jurisdiction; (2) by petition for review under Rule 42,[22] where judgment was rendered by the RTC in the exercise of appellate jurisdiction; and (3) by petition for review on *certiorari* to the Supreme Court under Rule 45.[23] The first mode of appeal is taken to the CA on questions of fact or mixed questions of fact and law. The second mode of appeal is brought to the CA on questions of fact, of law, or mixed questions of fact and law. The third mode of appeal is elevated to the Supreme Court only on questions of law.[24]

And in *Leoncio v. De Vera*,[25] this Court has differentiated a question of law from a question of fact. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or

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[20] Resolution of the Court *En Banc* in UDK-9748 dated March 1, 1990 as cited in *Macababbad, Jr. v. Masirag*, G.R. No. 161237, January 14, 2009, 576 SCRA 70, 83.

[21] Rule 41 — Appeal from the Regional Trial Courts.

[22] Rule 42 — Petition for Review from the Regional Trial Courts to the Court of Appeals.

[23] Rule 45 — Appeal by *Certiorari* to the Supreme Court.

[24] *Macababbad, Jr. v. Masirag*, *supra* note 20, at 83-84; see also *Abedes v. Court of Appeals*, G.R. 174373, October 15, 2007, 536 SCRA 268, 285-286; and *Suarez v. Villarama, Jr.*, G.R. No. 124512, June 27, 2006, 493 SCRA 74, 80.

[25] G.R. No. 176842, February 18, 2008, 546 SCRA 180.

any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[26]

Here, petitioner's appeal **does not only involve a question of law**. Aside from the trial court's ruling that it has no jurisdiction over the complaint, petitioner likewise questioned the other basis for the trial court's ruling, which refers to previously decided cases allegedly upholding with finality the ownership of the Malabanans over the disputed property. As correctly argued by petitioner, the question of whether the ownership of the Malabanans has in fact been sustained with finality is factual in nature as it requires the presentation of evidence.

Since the appeal raised mixed questions of fact and law, no error can be imputed on petitioner for invoking the appellate jurisdiction of the CA through an ordinary appeal under Rule 41.

WHEREFORE, the Resolution dated July 20, 2005 of the Court of Appeals in CA-G.R. CV No. 70770 is *REVERSED and SET ASIDE*. Petitioner's appeal is *REINSTATED* and the instant case is *REMANDED* to the Court of Appeals, which is directed to proceed with the usual appeal process therein with deliberate dispatch.

No costs.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Sereno, JJ.,* concur.

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[26] *Id.* at 184, citing *Binay v. Odeña,* G.R. No. 163683, June 8, 2007, 524 SCRA 248, 255-256, further citing *Velayo-Fong v. Velayo,* G.R. No. 155488, December 6, 2006, 510 SCRA 320, 329-330.

FIRST DIVISION

[G.R. No. 171365. October 6, 2010]

ERMELINDA C. MANALOTO, AURORA J. CIFRA, FLORDELIZA J. ARCILLA, LOURDES J. CATALAN, ETHELINDA J. HOLT, BIENVENIDO R. JONGCO, ARTEMIO R. JONGCO, JR. and JOEL JONGCO, *petitioners, vs.* **ISMAEL VELOSO III,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL FROM THE REGIONAL TRIAL COURT TO THE COURT OF APPEALS; "FRESH PERIOD RULE"; PARTY LITIGANT ALLOWED A FRESH PERIOD OF 15 DAYS TO FILE A NOTICE OF APPEAL FROM RECEIPT OF THE RTC'S DECISION OR FROM RECEIPT OF THE ORDER DISMISSING OR DENYING A MOTION FOR NEW TRIAL OR MOTION FOR RECONSIDERATION.— Jurisprudence has settled the "fresh period rule," according to which, an ordinary appeal from the RTC to the Court of Appeals, under Section 3 of Rule 41 of the Rules of Court, shall be taken within fifteen (15) days **either** from receipt of the original judgment of the trial court **or** from receipt of the final order of the trial court dismissing or denying the motion for new trial or motion for reconsideration. In *Sumiran v. Damaso*, we presented a survey of the cases applying the fresh period rule: As early as 2005, the Court categorically declared in ***Neypes v. Court of Appeals*** that by virtue of the power of the Supreme Court to amend, repeal and create new procedural rules in all courts, the Court is allowing **a fresh period of 15 days within which to file a notice of appeal in the RTC, counted from receipt of the order dismissing or denying a motion for new trial or motion for reconsideration**. This would standardize the appeal periods provided in the Rules and do away with the confusion as to when the 15-day appeal period should be counted. Thus, the Court stated: **To recapitulate, a party-litigant may either file his notice of appeal within 15 days from receipt of the Regional Trial Court's decision or file it within 15 days from receipt of**

the order (the "final order") denying his motion for new trial or motion for reconsideration. Obviously, the new 15-day period may be availed of only if either motion is filed; otherwise, the decision becomes final and executory after the lapse of the original appeal period provided in Rule 41, Section 3. The foregoing ruling of the Court was reiterated in *Makati Insurance Co., Inc. v. Reyes*. x x x Also in *Sumiran*, we recognized the retroactive application of the fresh period rule to cases pending and undetermined upon its effectivity.

2. ID.; ID.; MOTIONS TO DISMISS; GROUNDS; EFFECT WHERE COMPLAINT SUFFICIENTLY STATES A CAUSE OF ACTION.— According to Rule 2, Section 2 of the Rules of Court, a cause of action is the act or omission by which a party violates a right of another. When the ground for dismissal is that the complaint states no cause of action, such fact can be determined only from the facts alleged in the complaint and from no other, and the court cannot consider other matters *aliunde*. The test, therefore, is whether, assuming the allegations of fact in the complaint to be true, a valid judgment could be rendered in accordance with the prayer stated therein. x x x We cannot subscribe to respondent's argument that there is no more need for the presentation of evidence by the parties since petitioners, in moving for the dismissal of respondent's complaint for damages, hypothetically admitted respondent's allegations. The hypothetical admission of respondent's allegations in the complaint only goes so far as determining whether said complaint should be dismissed on the ground of failure to state a cause of action. A finding that the complaint sufficiently states a cause of action does not necessarily mean that the complaint is meritorious; it shall only result in the reinstatement of the complaint and the hearing of the case for presentation of evidence by the parties.

3. ID.; ID.; ACTIONS; WHEN CAUSE OF ACTION FOR DAMAGES EXISTS. — A cause of action (for damages) exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages. We find that all three elements exist in the case

at bar. Respondent may not have specifically identified each element, but it may be sufficiently determined from the allegations in his complaint.

4. CIVIL LAW; HUMAN RELATIONS; RIGHTS AND OBLIGATIONS OF EVERY MAN, PROTECTED.— [R]espondent filed the complaint to protect his good character, name, and reputation. Every man has a right to build, keep, and be favored with a good name. This right is protected by law with the recognition of slander and libel as actionable wrongs, whether as criminal offenses or tortuous conduct. x x x [P]etitioners are obliged to respect respondent's good name even though they are opposing parties in the unlawful detainer case. As Article 19 of the Civil Code requires, "[e]very 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." A violation of such principle constitutes an abuse of rights, a tortuous conduct.

5. ID.; ID.; ID.; RESPECT OF DIGNITY, PERSONALITY, PRIVACY AND PEACE OF MIND OF ANOTHER; VIOLATION THEREOF ALLOWS RECOVERY OF MORAL DAMAGES.— Petitioners are expected to respect respondent's "dignity, personality, privacy and peace of mind" under Article 26 of the Civil Code, which provides: ART. 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief: (1) Prying into the privacy of another's residence; (2) Meddling with or disturbing the private life or family relations of another; (3) Intriguing to cause another to be alienated from his friends; (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition. Thus, Article 2219(10) of the Civil Code allows the recovery of moral damages for acts and actions referred to in Article 26, among other provisions, of the Civil Code.

6. ID.; ID.; ID.; THAT PUBLIC HAS A RIGHT TO JUDICIAL RECORDS AND DOCUMENTS; NOT APPRECIATED WHERE THE PURPOSE IS TO HUMILIATE A PERSON AND TO DESTROY HIS GOOD NAME AND REPUTATION.

— It is already settled that the public has a right to see and copy judicial records and documents. However, this is not a case of the public seeking and being denied access to judicial records and documents. The controversy is rooted in the dissemination by petitioners of the MeTC judgment against respondent to Horseshoe Village homeowners, who were not involved at all in the unlawful detainer case, thus, purportedly affecting negatively respondent's good name and reputation among said homeowners. The unlawful detainer case was a private dispute between petitioners and respondent, and the MeTC decision against respondent was then still pending appeal before the RTC-Branch 88, rendering suspect petitioners' intentions for distributing copies of said MeTC decision to non-parties in the case. While petitioners were free to copy and distribute such copies of the MeTC judgment to the public, the question is whether they did so with the intent of humiliating respondent and destroying the latter's good name and reputation in the community.

7. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; HE WHO ALLEGES A FACT AS THAT OF BAD FAITH AND MALICE HAS THE BURDEN OF PROVING THEM BY PREPONDERANCE OF EVIDENCE.— In civil cases, he who alleges a fact has the burden of proving it by a preponderance of evidence. It is incumbent upon the party claiming affirmative relief from the court to convincingly prove its claim. Bare allegations, unsubstantiated by evidence are not equivalent to proof under our Rules. In short, mere allegations are not evidence. At this point, the finding of the Court of Appeals of bad faith and malice on the part of petitioners has no factual basis. Good faith is presumed and he who alleges bad faith has the duty to prove the same. Good faith refers to the state of the mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another. Bad faith, on the other hand, does not simply connote bad judgment to simple negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty due to some motive or interest or ill will that partakes of the nature of fraud. Malice connotes ill will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm.

APPEARANCES OF COUNSEL

Rafael P. Garcia for petitioners.
Polido and Anchuvas Law Office for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before Us is a Petition for Review on *Certiorari* of the Decision[1] dated January 31, 2006 of the Court Appeals in CA-G.R. CV No. 82610, which affirmed with modification the Resolution[2] dated September 2, 2003 of Branch 227 of the Regional Trial Court (RTC-Branch 227) of Quezon City in Civil Case No. Q-02-48341.

We partly reproduce below the facts of the case as culled by the Court of Appeals from the records:

> This case is an off-shoot of an unlawful detainer case filed by [herein petitioners] Ermelinda C. Manaloto, Aurora J. Cifra, Flordeliza J. Arcilla, Lourdes J. Catalan, Ethelinda J. Holt, Bienvenido R. Jongco, Artemio R. Jongco, Jr. and Joel Jongco against [herein respondent]. In said complaint for unlawful detainer, it was alleged that they are the lessors of a residential house located at No. 42 Big Horseshoe Drive, Horseshoe Village, Quezon City [subject property] which was leased to [respondent] at a monthly rental of ₱17,000.00. The action was instituted on the ground of [respondent's] failure to pay rentals from May 23, 1997 to December 22, 1998 despite repeated demands. [Respondent] denied the non-payment of rentals and alleged that he made an advance payment of ₱825,000.00 when he paid for the repairs done on the leased property.
>
> After trial, the Metropolitan Trial Court (MeTC) decided in favor of [petitioners] by ordering [respondent] to (a) vacate the premises at No. 42 Big Horseshoe Drive, Horseshoe Village, Quezon City; (b) pay [petitioners] the sum of ₱306,000.00 corresponding to the

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[1] *Rollo*, pp. 5-13; penned by Associate Justice Magdangal M. de Leon with Associate Justices Conrado M. Vasquez, Jr. and Mariano C. del Castillo (now a member of this Court), concurring.

[2] Records, pp. 186-187.

rentals due from May 23, 1997 to November 22, 1998, and the sum of ₱17,000.00 a month thereafter until [respondent] vacates the premises; and (c) pay [petitioners] the sum of ₱5,000.00 as attorney's fees.

On appeal to the Regional Trial Court (RTC) [Branch 88, Quezon City], the MeTC decision was reversed. [Respondent] was ordered to pay arrearages from May 23, 1997 up to the date of the decision but he was also given an option to choose between staying in the leased property or vacating the same, subject to the reimbursement by [petitioners] of one-half of the value of the improvements which it found to be in the amount of ₱120,000.00. [Respondent] was also given the right to remove said improvements pursuant to Article 1678 of the Civil Code, should [petitioners] refuse to pay ₱60,000.00.

When both parties moved for the reconsideration of the RTC decision, the RTC issued an Order dated February 23, 2001 modifying its previous ruling by increasing the value of the improvements from ₱120,000.00 to ₱800,000.00.

After successive appeals to the Court of Appeals and the Supreme Court, the decision of the RTC dated November 29, 2000 which reversed the decision of the MeTC, became final and executory.[3]

Whilst respondent's appeal of the Metropolitan Trial Court (MeTC) judgment in the unlawful detainer case was pending before the RTC-Branch 88, respondent filed before the RTC-Branch 227 on November 26, 2002 a Complaint for Breach of Contract and Damages[4] against the petitioners, docketed as Civil Case No. Q-02-48341. The said complaint alleged two causes of action. The *first cause of action* was for damages because the respondent supposedly suffered embarrassment and humiliation when petitioners distributed copies of the above-mentioned MeTC decision in the unlawful detainer case to the homeowners of Horseshoe Village while respondent's appeal was still pending before the Quezon City RTC-Branch 88. The *second cause of action* was for breach of contract since petitioners, as lessors, failed to make continuing repairs on the subject property

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[3] *Rollo,* pp. 6-7.

[4] Records, pp. 1-109.

to preserve and keep it tenantable. Thus, respondent sought the following from the court *a quo*:

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that after hearing the court render a decision against the [herein petitioners] and in favor of the [herein respondent] by —

1. Ordering [petitioners] to pay [respondent] the following amounts:

a) ₱1,500,000.00 as moral damages and consequential damages;

b) ₱500,000.00 as exemplary damages;

c) ₱425,000.00 representing the difference of the expenses of the improvements of ₱825,000.00 and ₱400,000.00 pursuant to Art. 1678 of the Civil Code;

d) ₱594,000.00 representing interest for three (3) years from 1998 to 2000 on the ₱825,000.00 advanced by the [respondent] at the rate of 24% per annum;

e) ₱250,000.00 as compensation for the [respondent's] labor and efforts in overseeing and attending the needs of contractors the repair/renovation of the leased premises;

f) ₱250,000.00, plus 20% of all recoveries from [petitioners] and ₱2,500.00 per hearing as attorney's fees;

g) Cost of suit.

[Respondent] further prays for such other reliefs and remedies which are just and equitable under the premises.[5]

The petitioners filed an Omnibus Motion[6] on February 18, 2003 praying for, among other reliefs, the dismissal of respondent's complaint in Civil Case No. Q-02-48341. Petitioners argued that respondent had no cause of action against them because the MeTC decision in the unlawful detainer case was a matter of public record and its disclosure to the public violated

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

[6] *Id.* at 112-130.

no law or any legal right of the respondent. Moreover, petitioners averred that the respondent's present Complaint for Breach of Contract and Damages was barred by prior judgment since it was a mere replication of respondent's Answer with Compulsory Counterclaim in the unlawful detainer case before the MeTC. The said unlawful detainer case was already judicially decided with finality.

On September 2, 2003, the RTC-Branch 227 issued a Resolution dismissing respondent's complaint in Civil Case No. Q-02-48341 for violating the rule against splitting of cause of action, lack of jurisdiction, and failure to disclose the pendency of a related case. The RTC-Branch 227 adjudged that Civil Case No. Q-02-48341 involved the same facts, parties, and causes of action as those in the unlawful detainer case, and the MeTC had already properly taken cognizance of the latter case.

Respondent received a copy of the RTC-Branch 227 decision in Civil Case No. Q-02-48341 on September 26, 2003. He filed a Motion for Reconsideration[7] of said judgment on October 10, 2003, which RTC-Branch 227 denied in an Order[8] dated December 30, 2003.

Respondent received a copy of the RTC-Branch 227 order denying his Motion for Reconsideration on February 20, 2004, and he filed his Notice of Appeal[9] on March 1, 2004. However, the RTC-Branch 227, in an Order[10] dated March 23, 2004, dismissed respondent's appeal for being filed out of time.

Respondent received a copy of the RTC-Branch 27 order dismissing his appeal on April 30, 2004 and he filed a Motion for Reconsideration[11] of the same on May 3, 2004. The RTC-Branch 227, in another Order[12] dated May 31, 2004, granted

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[7] *Id.* at 189-196.

[8] *Id.* at 205.

[9] *Id.* at 209-210.

[10] *Id.* at 214.

[11] *Id.* at 215-217.

[12] *Id.* at 224-225.

respondent's latest motion because it was "convinced that it is but appropriate and fair to both parties that this matter of whether or not the Appeal was filed on time, be resolved by the appellate court rather than by this Court." The RTC-Branch 227 then ordered that the records of the case be forwarded as soon as possible to the Court of Appeals for further proceedings.

The Court of Appeals, in a Resolution[13] dated February 8, 2005, resolved to give due course to respondent's appeal. Said appeal was docketed as CA-G.R. CV No. 82610.

On January 31, 2006, the Court of Appeals rendered its Decision in CA-G.R. CV No. 82610. The Court of Appeals fully agreed with the RTC-Branch 227 in dismissing respondent's second cause of action (*i.e.*, breach of contract) in Civil Case No. Q-02-48341. The appellate court, however, held that RTC-Branch 227 should have proceeded with the trial on the merits of the first cause of action (*i.e.*, damages) in Civil Case No. Q-02-48341, because "[a]lthough [herein respondent] may have stated the same factual antecedents that transpired in the unlawful detainer case, such allegations were necessary to give an overview of the facts leading to the institution of another case between the parties before the RTC acting in its original jurisdiction."[14]

The Court of Appeals then went on to find that petitioners were indeed liable to respondent for damages:

> No doubt, distributing the copies was primarily intended to embarrass [herein respondent] in the community he mingled in. We are not unmindful of the fact that court decisions are public documents and the general public is allowed access thereto to make inquiries thereon or to secure a copy thereof. Nevertheless, under the circumstances of this case, although court decisions are public documents, distribution of the same during the pendency of an appeal was clearly intended to cause [respondent] some form of harassment and/or humiliation so that [respondent] would be ostracized by his neighbors. The appeal may have delayed the attainment of finality of the determination of the rights of the parties and the execution

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[13] CA *rollo*, pp. 158-159.

[14] *Rollo*, pp. 11-12.

in the unlawful detainer case but it did not justify [herein petitioners'] pre-emption of the outcome of the appeal. By distributing copies of the MeTC decision, [petitioners] appeared to have assumed that the MeTC decision would simply be affirmed and therefore they tried to cause the early ouster of [respondent] thinking that a humiliated [respondent] would scurry out of the leased premises. Clearly, there was evident bad faith intended to mock [respondent's] right to appeal which is a statutory remedy to correct errors which might have been committed by the lower court.

Thus, moral damages may be awarded since [petitioners] acted in bad faith. Bad faith does not simply connote bad judgment or negligence, it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud. However, an award of moral damages would require certain conditions to be met, to wit: (1) first, there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) second, there must be culpable act or omission factually established; (3) third, the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) fourth, the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code.

But it must again be stressed that moral damages are emphatically not intended to enrich a plaintiff at the expense of the defendant. When awarded, moral damages must not be palpably and scandalously excessive as to indicate that it was the result of passion, prejudice or corruption on the part of the trial court judge. For this reason, this Court finds an award of ₱30,000.00 moral damages sufficient under the circumstances.

On the other hand, to warrant the award of exemplary damages, the wrongful act must be accompanied by bad faith, and an award of damages would be allowed only if the guilty party acted in a wanton, fraudulent, reckless or malevolent manner. Accordingly, exemplary damages in the amount of ₱10,000.00 is appropriate.[15]

In the end, the Court of Appeals decreed:

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[15] *Id*.

WHEREFORE, the decision of the Regional Trial Court is AFFIRMED with the MODIFICATION that the case is dismissed only as to the second cause of action. As to the first cause of action, [herein petitioners] are ordered to pay [herein respondent] moral damages of ₱30,000.00 and exemplary damages of ₱10,000.00.[16]

Hence, the instant Petition for Review.

Petitioners assert that respondent's appeal of the RTC-Branch 227 Resolution dated September 2, 2003, which dismissed the latter's complaint in Civil Case No. Q-02-48341, was filed out of time. Respondent received a copy of the said resolution on **September 26, 2003**, and he only had **15 days** from such date to file his appeal, or until **October 11, 2003**. Respondent, instead, filed a Motion for Reconsideration of the resolution on **October 10, 2003**, which left him with only one more day to file his appeal. The RTC-Branch 227 subsequently denied respondent's Motion for Reconsideration in an Order dated December 30, 2003, which the respondent received on **February 20, 2004**. Respondent only had until the following day, **February 21, 2004**, to file the appeal. However, respondent filed his Notice of Appeal only on **March 1, 2004**. Hence, petitioners conclude that the dismissal of respondent's complaint in Civil Case No. Q-02-48341 already attained finality.

Petitioners argue in the alternative that the award of damages in respondent's favor has no factual and legal bases. They contend that the Court of Appeals erred in awarding moral and exemplary damages to respondent based on the bare and unproven allegations in the latter's complaint and without the benefit of any hearing or trial. While the appellate court declared that RTC-Branch 227 should have proceeded with the trial on the merits involving the action for damages, it surprisingly went ahead and ruled on petitioners' liability for said damages even without trial. Even assuming for the sake of argument that respondent's allegations in his complaint are true, he still has no cause of action for damages against petitioners, for the

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[16] *Id.* at 12.

disclosure of a court decision, which is part of public record, did not cause any legal and compensable injury to respondent.

Respondent, on the other hand, maintains that his appeal of the September 2, 2003 Resolution of the RTC-Branch 227 to the Court of Appeals was timely filed and that the same was aptly given due course. In addition, respondent asserts that the appellate court was correct in holding petitioners liable for damages even without any hearing or trial since petitioners, in filing their omnibus motion praying for the dismissal of respondent's complaint on the ground of "no cause of action," were deemed to have hypothetically admitted as true the allegations in said complaint.

The petition is partly meritorious.

We note, at the outset, that the propriety of the dismissal by the RTC-Branch 227 of respondent's second cause of action against petitioners (*e.g.*, for breach of contract) was no longer disputed by the parties. Thus, the present appeal pertains only to respondent's first cause of action (*e.g.*, for damages), and in connection therewith, we are called upon to resolve the following issues: (1) whether respondent timely filed his appeal of the Resolution dated September 2, 2003 of the RTC-Branch 227 before the Court of Appeals; and (2) whether respondent is entitled to the award of moral and exemplary damages.

We answer the first issue on the timeliness of respondent's appeal affirmatively.

Jurisprudence has settled the "fresh period rule," according to which, an ordinary appeal from the RTC to the Court of Appeals, under Section 3 of Rule 41 of the Rules of Court, shall be taken within fifteen (15) days **either** from receipt of the original judgment of the trial court **or** from receipt of the final order of the trial court dismissing or denying the motion for new trial or motion for reconsideration. In *Sumiran v. Damaso*,[17] we presented a survey of the cases applying the fresh period rule:

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[17] G.R. No. 162518, August 19, 2009, 596 SCRA 450, 455-459.

As early as 2005, the Court categorically declared in ***Neypes v. Court of Appeals*** that by virtue of the power of the Supreme Court to amend, repeal and create new procedural rules in all courts, the Court is allowing **a fresh period of 15 days within which to file a notice of appeal in the RTC, counted from receipt of the order dismissing or denying a motion for new trial or motion for reconsideration**. This would standardize the appeal periods provided in the Rules and do away with the confusion as to when the 15-day appeal period should be counted. Thus, the Court stated:

> **To recapitulate, a party-litigant may either file his notice of appeal within 15 days from receipt of the Regional Trial Court's decision or file it within 15 days from receipt of the order (the "final order") denying his motion for new trial or motion for reconsideration. Obviously, the new 15-day period may be availed of only if either motion is filed; otherwise, the decision becomes final and executory after the lapse of the original appeal period provided in Rule 41, Section 3.**

The foregoing ruling of the Court was reiterated in *Makati Insurance Co., Inc. v. Reyes*, to wit:

> Propitious to petitioner is *Neypes v. Court of Appeals*, promulgated on 14 September 2005 while the present Petition was already pending before us. x x x.
>
> x x x x x x x x x
>
> **With the advent of the "fresh period rule" parties who availed themselves of the remedy of motion for reconsideration are now allowed to file a notice of appeal within fifteen days from the denial of that motion.**
>
> The "fresh period rule" is not inconsistent with **Rule 41, Section 3** of the Revised Rules of Court which states that the appeal shall be taken "within fifteen (15) days from notice of judgment or final order appealed from." The use of the disjunctive word "or" signifies disassociation and independence of one thing from another. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, **the use of "or" in the above provision supposes that the notice of appeal may be filed within 15 days from the notice of judgment or within 15 days from notice of the "final order,"** x x x.

x x x x x x x x x

> The "fresh period rule" finally eradicates the confusion as to when the 15-day appeal period should be counted — from receipt of notice of judgment or from receipt of notice of "final order" appealed from.
>
> Taking our bearings from *Neypes*, in *Sumaway v. Urban Bank, Inc.*, we set aside the denial of a notice of appeal which was purportedly filed five days late. With the fresh period rule, the 15-day period within which to file the notice of appeal was counted from notice of the denial of the therein petitioner's motion for reconsideration.
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> We followed suit in *Elbiña v. Ceniza*, wherein we applied the principle granting a fresh period of 15 days within which to file the notice of appeal, counted from receipt of the order dismissing a motion for new trial or motion for reconsideration or any final order or resolution.
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> Thereafter, in *First Aqua Sugar Traders, Inc. v. Bank of the Philippine Islands*, we held that a party-litigant may now file his notice of appeal either within fifteen days from receipt of the original decision or within fifteen days from the receipt of the order denying the motion for reconsideration.
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> In *De los Santos v. Vda. de Mangubat*, we applied the same principle of "fresh period rule," expostulating that procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statutes. The "fresh period rule" is irrefragably procedural, prescribing the manner in which the appropriate period for appeal is to be computed or determined and, therefore, can be made applicable to actions pending upon its effectivity, such as the present case, without danger of violating anyone else's rights.[18] (Emphases supplied.)

Also in *Sumiran*, we recognized the retroactive application of the fresh period rule to cases pending and undetermined upon its effectivity:

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[18] *Id.* at 455-457.

The retroactivity of the Neypes rule in cases where the period for appeal had lapsed prior to the date of promulgation of Neypes on **September 14, 2005,** was clearly explained by the Court in ***Fil-Estate Properties, Inc. v. Homena-Valencia,*** stating thus:

> The determinative issue is whether the "fresh period" rule announced in Neypes could retroactively apply in cases where the period for appeal had lapsed prior to 14 September 2005 when Neypes was promulgated. **That question may be answered with the guidance of the general rule that procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure.** Amendments to procedural rules are procedural or remedial in character as they do not create new or remove vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing.[19] (Emphases supplied.)

In the case before us, respondent received a copy of the Resolution dated September 2, 2003 of the RTC-Branch 227 dismissing his complaint in Civil Case No. Q-02-48341 on **September 26, 2003**. Fourteen days thereafter, on **October 10, 2003**, respondent filed a Motion for Reconsideration of said resolution. The RTC-Branch 227 denied respondent's Motion for Reconsideration in an Order dated December 30, 2003, which the respondent received on **February 20, 2004**. On **March 1, 2004**, just after **nine days** from receipt of the order denying his Motion for Reconsideration, respondent already filed his Notice of Appeal. Clearly, under the fresh period rule, respondent was able to file his appeal well-within the prescriptive period of 15 days, and the Court of Appeals did not err in giving due course to said appeal in CA-G.R. CV No. 82610.

We likewise agree with the Court of Appeals that the RTC-Branch 227 should not have dismissed respondent's complaint for damages on the ground of failure to state a cause of action.

According to Rule 2, Section 2 of the Rules of Court, a cause of action is the act or omission by which a party violates a right of another.

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[19] *Id.* at 457-458.

When the ground for dismissal is that the complaint states no cause of action, such fact can be determined only from the facts alleged in the complaint and from no other, and the court cannot consider other matters *aliunde*. The test, therefore, is whether, assuming the allegations of fact in the complaint to be true, a valid judgment could be rendered in accordance with the prayer stated therein.[20]

Respondent made the following allegations in support of his claim for damages against petitioners:

FIRST CAUSE OF ACTION

28. After the promulgation of the Metropolitan Trial Court of its Decision dated August 3, 1999, ordering the [herein respondent] and all person claiming rights under him to —

(a) Vacate the leased premises;
(b) pay the [herein petitioners] the sum of ₱306,000.00 as unpaid rentals from May 23, 1997 to November 22, 1998; and
(c) pay the sum of ₱5,000.00 as attorneys fees;

But while said Decision was still pending appeal with the Regional Trial Court, the [petitioners], through [petitioner] Manaloto, already distributed copies of said Decision to some of the homeowners of Horseshoe Village, who personally know the [respondent]. This act is a direct assault or character assassination on the part of the [respondent] because as stated in the said decision, [respondent] has been staying in the premises but did not or refused to pay his monthly rentals for a long period of time when in truth and in fact was untrue.

29. That from the time the said decision was distributed to said members homeowners, the [respondent] became the subject of conversation or talk of the town and by virtue of which [respondent's] good name within the community or society where he belongs was greatly damaged; his reputation was besmirched; [respondent] suffered sleepless night and serious anxiety. [Respondent], who is the grandson of the late Senator Jose Veloso and Congressman Ismael Veloso, was deprived of political career and to start with was to run as candidate

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[20] *Associated Bank v. Montano, Sr.*, G.R. No. 166383, October 16, 2009, 604 SCRA 134, 144.

for Barangay Chairman within their area which was being offered to him by the homeowners but this offer has started to fade and ultimately totally vanished after the distribution of said Decision. Damages to his good names and reputations and other damages which he suffered as a consequence thereof, may be reasonably compensated for at least ₱1,500,000.00 as moral and consequential damages.

30. In order to deter [petitioners] and others from doing as abovementioned, [petitioners] should likewise be assessed exemplary damages in the amount of ₱500,000.00.[21]

A cause of action (for damages) exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[22] We find that all three elements exist in the case at bar. Respondent may not have specifically identified each element, but it may be sufficiently determined from the allegations in his complaint.

First, respondent filed the complaint to protect his good character, name, and reputation. Every man has a right to build, keep, and be favored with a good name. This right is protected by law with the recognition of slander and libel as actionable wrongs, whether as criminal offenses or tortuous conduct.[23]

Second, petitioners are obliged to respect respondent's good name even though they are opposing parties in the unlawful detainer case. As Article 19 of the Civil Code requires, "[e]very 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." A violation of such principle constitutes

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[21] Records, pp. 12-14.

[22] *Vergara v. Court of Appeals*, 377 Phil. 336, 341 (1999).

[23] *Brillante v. Court of Appeals*, 483 Phil. 568, 571 (2004).

an abuse of rights, a tortuous conduct. We expounded in *Sea Commercial Company, Inc. v. Court of Appeals*[24] that:

> The principle of abuse of rights stated in the above article, departs from the classical theory that "he who uses a right injures no one." The modern tendency is to depart from the classical and traditional theory, and to grant indemnity for damages in cases where there is an abuse of rights, even when the act is not illicit.
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> Article 19 was intended to expand the concept of torts by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to provide specifically in statutory law. If mere fault or negligence in one's acts can make him liable for damages for injury caused thereby, with more reason should abuse or bad faith make him liable. The absence of good faith is essential to abuse of right. Good faith is an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of the law, together with an absence of all information or belief of fact which would render the transaction unconscientious. In business relations, it means good faith as understood by men of affairs.
>
> While Article 19 may have been intended as a mere declaration of principle, the "cardinal law on human conduct" expressed in said article has given rise to certain rules, *e.g*. that where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to liability. The elements of an abuse of rights under Article 19 are: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.[25]

Petitioners are also expected to respect respondent's "dignity, personality, privacy and peace of mind" under Article 26 of the Civil Code, which provides:

> ART. 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

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[24] 377 Phil. 221 (1999).

[25] *Id.* at 229-230.

(1) Prying into the privacy of another's residence;

(2) Meddling with or disturbing the private life or family relations of another;

(3) Intriguing to cause another to be alienated from his friends;

(4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.

Thus, Article 2219(10) of the Civil Code allows the recovery of moral damages for acts and actions referred to in Article 26, among other provisions, of the Civil Code.

In *Concepcion v. Court of Appeals*,[26] we explained that:

The philosophy behind Art. 26 underscores the necessity for its inclusion in our civil law. The Code Commission stressed in no uncertain terms that the human personality must be exalted. The sacredness of human personality is a concomitant consideration of every plan for human amelioration. The touchstone of every system of law, of the culture and civilization of every country, is how far it dignifies man. If the statutes insufficiently protect a person from being unjustly humiliated, in short, if human personality is not exalted — then the laws are indeed defective. Thus, under this article, the rights of persons are amply protected, and damages are provided for violations of a person's dignity, personality, privacy and peace of mind.

It is petitioner's position that the act imputed to him does not constitute any of those enumerated in Arts. 26 and 2219. In this respect, the law is clear. The violations mentioned in the codal provisions are not exclusive but are merely examples and do not preclude other similar or analogous acts. Damages therefore are allowable for actions against a person's dignity, such as profane, insulting, humiliating, scandalous or abusive language. Under Art. 2217 of the Civil Code, moral damages which include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury, although incapable of pecuniary computation, may

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[26] 381 Phil. 90 (2000).

be recovered if they are the proximate result of the defendant's wrongful act or omission.[27]

And third, respondent alleged that the distribution by petitioners to Horseshoe Village homeowners of copies of the MeTC decision in the unlawful detainer case, which was adverse to respondent and still on appeal before the RTC-Branch 88, had no apparent lawful or just purpose except to humiliate respondent or assault his character. As a result, respondent suffered damages — becoming the talk of the town and being deprived of his political career.

Petitioners reason that respondent has no cause of action against them since the MeTC decision in the unlawful detainer case was part of public records.

It is already settled that the public has a right to see and copy judicial records and documents.[28] However, this is not a case of the public seeking and being denied access to judicial records and documents. The controversy is rooted in the dissemination by petitioners of the MeTC judgment against respondent to Horseshoe Village homeowners, who were not involved at all in the unlawful detainer case, thus, purportedly affecting negatively respondent's good name and reputation among said homeowners. The unlawful detainer case was a private dispute between petitioners and respondent, and the MeTC decision against respondent was then still pending appeal before the RTC-Branch 88, rendering suspect petitioners' intentions for distributing copies of said MeTC decision to non-parties in the case. While petitioners were free to copy and distribute such copies of the MeTC judgment to the public, the question is whether they did so with the intent of humiliating respondent and destroying the latter's good name and reputation in the community.

Nevertheless, we further declare that the Court of Appeals erred in already awarding moral and exemplary damages in respondent's favor when the parties have not yet had the chance

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[27] *Id.* at 99.

[28] *Hilado v. Judge Reyes*, 496 Phil. 55, 68 (2005).

to present any evidence before the RTC-Branch 227. In civil cases, he who alleges a fact has the burden of proving it by a preponderance of evidence. It is incumbent upon the party claiming affirmative relief from the court to convincingly prove its claim. Bare allegations, unsubstantiated by evidence are not equivalent to proof under our Rules. In short, mere allegations are not evidence.[29]

At this point, the finding of the Court of Appeals of bad faith and malice on the part of petitioners has no factual basis. Good faith is presumed and he who alleges bad faith has the duty to prove the same. Good faith refers to the state of the mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another. Bad faith, on the other hand, does not simply connote bad judgment to simple negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty due to some motive or interest or ill will that partakes of the nature of fraud. Malice connotes ill will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm.[30]

We cannot subscribe to respondent's argument that there is no more need for the presentation of evidence by the parties since petitioners, in moving for the dismissal of respondent's complaint for damages, hypothetically admitted respondent's allegations. The hypothetical admission of respondent's allegations in the complaint only goes so far as determining whether said complaint should be dismissed on the ground of failure to state a cause of action. A finding that the complaint sufficiently states a cause of action does not necessarily mean that the complaint is meritorious; it shall only result in the reinstatement of the complaint and the hearing of the case for presentation of evidence by the parties.

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[29] *Mayor v. Belen*, G.R. No. 151035, June 3, 2004, 430 SCRA 561, 567.

[30] *Arra Realty Corporation v. Guarantee Development Corporation and Insurance Agency*, G.R. No. 142310, September 20, 2004, 438 SCRA 441, 469.

WHEREFORE, in view of all the foregoing, the petition is *PARTIALLY GRANTED*. The Decision dated January 31, 2006 of the Court of Appeals in CA-G.R. CV No. 82610 is *AFFIRMED WITH MODIFICATIONS*. The award of moral and exemplary damages made by the Court of Appeals in favor of respondent Ismael Veloso III is *DELETED*. The complaint of respondent Ismael Veloso III in Civil Case No. Q-02-48341 is hereby *REINSTATED* before Branch 227 of the Regional Trial Court of Quezon City only in so far as the first cause of action is concerned. The said court is *DIRECTED* to hear and dispose of the case with dispatch.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Nachura,[*] and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 171980. October 6, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **OLIVE RUBIO MAMARIL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); DEFENSE OF FRAME-UP, NOT APPRECIATED.— The repeated contentions of frame-up of the accused-appellant and that the dangerous drug of methamphetamine hydrochloride was planted by the police officers do not deserve further considerations by this Court. While We are aware that in some cases, law enforcers resort to the practice of planting evidence in order that to, *inter alia*, harass, nevertheless the defense of frame-up in drug cases

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[*] Per Raffle dated September 27, 2010.

requires strong and convincing evidence because of the presumption that the police officers performed their duties regularly and that they acted within the bounds of their authority. Frame-up, like alibi, is generally viewed with caution by the Court because it is easy to contrive and difficult to disprove. It is a common and standard line of defense in prosecutions of violations of the Dangerous Drugs Act.

2. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES IN THE ABSENCE OF ILL-MOTIVE, UPHELD AS AGAINST THE ALLEGATION OF FRAME-UP.— Indeed it is a constitutional mandate that in all criminal prosecutions, **the accused shall be presumed innocent until the contrary is proved** and that on the other hand, it is in the Rules of Court that. — "The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence: "x x x **"m. That official duty has been regularly performed;** x x x" In the case at hand, the so-called frame-up was virtually pure allegation bereft of credible proof. The narration of the police officer who implemented the search warrant, was found after trial and appellate review as the true story. It is on firmer ground than the self-serving statement of the accused-appellant of frame-up. The defense cannot solely rely upon the constitutional presumption of innocence for, while it is constitutional, the presumption is not conclusive. Notably, the accused-appellant herself stated in her brief that "no proof was proffered by the accused-appellant of the police officers' alleged ill motive." Stated otherwise, the narration of the incident by law enforcers, buttressed by the presumption that they have regularly performed their duties in the absence of convincing proof to the contrary, must be given weight.

3. ID.; CIVIL PROCEDURE; APPEALS; ISSUES CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; EXCUSED IN THE INTEREST OF JUSTICE. — A party cannot change his theory on appeal nor raise in the appellate court any question of law or of fact that was not raised in the court below or which was not within the issue raised by the parties in their pleadings. In a long line of cases, this Court held that points of law, theories, issues and arguments not adequately brought to the attention of the trial court ordinarily will not be considered by a reviewing

court as they cannot be raised for the first time on appeal because this would be offensive to the basic rules of fair play, justice and due process. We opt to get out of the ordinary in this case. After all, technicalities must serve, not burden the cause of justice. It is a prudent course of action to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice. We thus allow the new arguments for the final disposition of this case.

4. ID.; CRIMINAL PROCEDURE; SEARCH WARRANT; REQUISITES FOR ISSUANCE THEREOF; PROBABLE CAUSE, DEFINED. — The requisites for the issuance of a search warrant are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized. On the other hand, probable cause means such facts and circumstances which would lead a reasonable discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched.

5. ID.; ID.; SEARCH WARRANT; ISSUANCE THEREOF; DETERMINATION OF PROBABLE CAUSE. — Section 6, Rule 126 of the *Rules on Criminal Procedure* provides that: **If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant,** which must be substantially in the form prescribed by these Rules. There is no general formula or fixed rule for the determination of probable cause since the same must be decided in light of the conditions obtaining in given situations and its existence depends to a large degree upon the findings or opinion of the judge conducting the examination. It is presumed that a judicial function has been regularly performed, absent a showing to the contrary. A magistrate's determination of a probable cause for the issuance of a search warrant is paid with great deference by a reviewing court, as long as there was substantial basis for that determination.

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.*:

For review through this appeal[1] is the Decision[2] dated 31 August 2005 of the Court of Appeals in CA-G.R. CR. No. 28482 which affirmed the conviction of herein accused-appellant OLIVE RUBIO MAMARIL of possession of dangerous drugs in violation of Section 11, Article II[3] of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. The dispositive portion of the assailed decision reads:

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[1] Via a notice of appeal, pursuant to Section 2 (c) of Rule 122 of the Rules of Court.

[2] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Roberto A. Barrios and Vicente S.E. Veloso concurring. CA *rollo*, pp. 54-62.

[3] **Section 11.** *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, **methamphetamine hydrochloride or *"shabu,"*** or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

WHEREFORE, premises considered, the appeal is **DISMISSED** for lack of merit. The challenged judgment of the court *a quo* is hereby **AFFIRMED**.[4]

The affirmed disposition reads:

WHEREFORE, upon proof of guilt beyond reasonable doubt, this court sentences accused Olive Rubio Mamaril to suffer an indeterminate prison term of twelve (12) years and one (1) day as minimum to twenty (20) years as maximum and a fine of ₱300,000 for violation of Section 11, Article II, of R.A. 9165[5].

The facts as presented by the prosecution before the appellate court follow:

On 25 March 2003, at 9:30 o'clock in the evening, SPO4 Alexis Gotidoc, along with the members of Intel Operatives of Tarlac City Police Station and Philippine Drug Enforcement Agency (PDEA), implemented Search Warrant No. 144C dated 18 March 2003 issued by Judge Alipio Yumul of Branch 66, Regional Trial Court, Capas, Tarlac against the appellant in her residence at Zone 1, *Barangay* Maliwalo, Tarlac City, Province of Tarlac.[6]

Prior to the search, the police team invited *Barangay Kagawad* Oscar Tabamo of *Barangay* Maliwalo to witness the conduct of the search and seizure operation in the appellant's house. With *Barangay Kagawad* Tabamo, the police team presented the search warrant to appellant and informed her of the purpose of the search and her constitutional rights.[7]

Afterwards, SPO4 Gotidoc, the designated searcher, started searching the appellant's house, in the presence of the appellant and *Kagawad* Tabamo. During his search, he found on the top cover of the refrigerator one (1) plastic sachet containing white crystalline substance. Thereafter he prepared a Certificate of

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[4] CA *rollo*, p. 61.

[5] Records, p. 53.

[6] CA *rollo*, p. 55, TSN, 29 August 2003, p. 3.

[7] *Id.* at 56; *id.*

Good Search and Confiscation Receipt which the appellant refused to sign.[8]

The plastic sachet was brought to the Tarlac Provincial Crime Laboratory located at Tarlac Provincial Hospital for qualitative examination. The examination conducted by Engr. Marcene G. Agala, the Forensic Chemist who tested the white crystalline substance, yielded positive results for 0.055 gram of Methamphetamine Hydrochloride, commonly known as *shabu*, a dangerous drug.[9]

The factual version presented by the defense is:

On 25 March 2003, at 9:30 o' clock in the evening the police officers arrived at appellant's house and showed her a search warrant. Thereafter, the policemen searched her house but found nothing. Then a certain Police Officer Pangilinan asked her where she was sleeping. When she replied that she was inside the hut, the police officers proceeded to and searched the place and found the plastic sachet containing the *shabu*.[10]

Thereafter, she was brought to the sub-station at Maliwalo and was told, particularly by SPO4 Gotidoc and a certain Ma'am Dulay that in exchange of ₱20,000.00, no case would be filed against her. When she told them that she did not have money, she was detained.[11] However, on cross-examination, the appellant admitted that the alleged extortion of ₱20,000.00 was not reported to the higher ranking police officers.[12]

Appellant claims that the police officers framed her up and planted the *shabu* inside her house because of her refusal to give them money.[13]

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[8] *Id.*; *id.* at 3-4.

[9] *Id.*; TSN, 14 October 2003, pp. 6-7.

[10] TSN, 5 February 2004, p. 3.

[11] *Id.* at 56-57, TSN, 5 February 2004, p. 6.

[12] *Id.* at 57; *id.* at 10-11.

[13] *Id.* at 56; *id.* at 6.

Eventually, an Information was filed against the appellant which reads:

> That on March 25, 2003 at around 9:30 o'clock in the evening at Tarlac City and within the jurisdiction of this Honorable Court, accused, did then and there willfully, unlawfully and criminally have in her possession and control Methamphetamine Hydrochloride known as *Shabu*, a dangerous drug, weighing more or less 0.055 gram, without being authorized by law.
>
> CONTRARY TO LAW[14]

Upon arraignment, the appellant, assisted by the *de-oficio* counsel, entered a plea of not guilty.

On 21 April 2004, the trial court found the accused-appellant guilty of violation of Section 11, Article II, of R.A. 9165.[15]

On appeal, the Court of Appeals ruled that the evidence for the prosecution fully proved beyond reasonable doubt the elements necessary to successfully prosecute a case for illegal possession of a regulated drug, namely, (a) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug, (b) such possession is not authorized by law and (c) the accused freely and consciously possessed said drug.[16]

Centered on the conduct of the search of appellant's house that yielded the prohibited substance, the Court of Appeals upheld the trial court on the finding that "after a careful evaluation and analysis of the arguments presented by the prosecution and the defense, we hold that the search conducted by the INTEL Operatives of Tarlac City Police Station, in coordination with the PDEA, on the residence of the accused-appellant on 25 March 2003 at Zone 1, *Barangay* Maliwalo, Tarlac City and the seizure therein of one (1) plastic pack of white crystalline substance of methamphetamine hydrochloride or "*shabu*" weighing 0.055 gram are legal. As a consequence of the legal search, the said methamphetamine hydrochloride or "*shabu*" seized on the

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[14] Records, p. 1.

[15] *Id.* at 53.

[16] CA *rollo*, p. 59.

occasion thereof, is admissible in evidence against the accused-appellant."[17]

In this appeal, accused-appellant, through her new counsel from the Public Attorney's Office, goes further back, presenting new arguments, that (1) the search warrant was not based on probable cause, hence, the evidence allegedly obtained through it may not be admitted to support the accused-appellant's conviction;[18] and (2) the presumption of regularity in the performance of official functions by public officers cannot prevail over the presumption of innocence.[19]

We first deal with the original position of the accused which, in this petition, begins with the contention of non-compliance with all the requisites of illegal possession of dangerous drugs. We agree with the rulings of the trial court and the Court of Appeals that there was indeed full satisfaction of the requisites for the conviction of the accused.

The trial court found that the evidence presented by the prosecution was not adequately defeated. Re-stating that in illegal possession of prohibited drugs, there are only three (3) elements to secure conviction: (1) accused is in possession of the prohibited drugs; (2) such possession is not authorized by law; and (3) accused consciously and freely possessed the prohibited drugs,[20] the trial court held that all these were established beyond doubt. It determined that appellant failed to proffer evidence enough to discredit the prosecution and render doubtful his guilt.[21]

The Court of Appeals found no reason to overturn the finding of the trial court. It held that:

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[17] *Id.* at 60-61.

[18] Supplemental Brief. *Rollo*, p. 280.

[19] *Id.* at 283.

[20] *People v. Chen Tiz Chang*, G.R. Nos. 131872-73, 382 Phil. 669, 684 (2000).

[21] Records, p. 52.

After a careful evaluation and analysis of the arguments presented by the prosecution and the defense, we hold that the search by the INTEL Operatives of Tarlac City Police Station, in coordination with the PDEA, on the residence of the accused-appellant on March 25, 2003 at Zone 1, *Barangay* Maliwalo, Tarlac City and the seizure therein of one (1) plastic pack of white crystalline substance of methamphetamine hydrochloride or *"shabu"* weighing 0.055 gram are legal. As a consequence of the legal search, the said methamphetamine hydrochloride or *"shabu"* seized on the occasion thereof, is admissible in evidence against the accused-appellant.[22]

We will not reverse this holding. The repeated contentions of frame-up of the accused-appellant[23] and that the dangerous drug of methamphetamine hydrochloride was planted by the police officers do not deserve further considerations by this Court. While We are aware that in some cases, law enforcers resort to the practice of planting evidence in order that to, *inter alia*, harass, nevertheless the defense of frame-up in drug cases requires strong and convincing evidence because of the presumption that the police officers performed their duties regularly and that they acted within the bounds of their authority.[24]

Frame-up, like alibi, is generally viewed with caution by the Court because it is easy to contrive and difficult to disprove. It is a common and standard line of defense in prosecutions of violations of the Dangerous Drugs Act.[25] And so is the likewise repeated referral to the primacy of the constitutional presumption of innocence over the presumption of regularity in the performance of public functions,[26] the contention being that the frame-up argument is supported by the constitutional presumption of innocence.

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[22] *Id.* at 60-61.

[23] TSN, 5 February 2004, p. 6.

[24] *Chan v. Secretary of Justice*, G.R. 147065, 14 March 2008, 548 SCRA 337, 353; *Dacles v. People*, G.R. No. 171487, 14 March 2008, 548 SCRA 643, 658.

[25] *People v. Del Monte*, G.R. No. 179940, 23 April 2008, 552 SCRA 627, 639; *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA 421, 443.

[26] *Rollo*, p. 283.

The argument is without merit.

Indeed it is a constitutional mandate[27] that in all criminal prosecutions, **the accused shall be presumed innocent <u>until the contrary is proved</u>** and that on the other hand, it is in the Rules of Court[28] that. —

"The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

"x x x x x x x x x

"m. That official duty has been regularly performed; (Emphasis supplied)

x x x x x x x x x"

In the case at hand, the so-called frame-up was virtually pure allegation bereft of credible proof. The narration[29] of the police officer who implemented the search warrant, was found after trial and appellate review as the true story. It is on firmer ground than the self-serving statement of the accused-appellant of frame-up.[30] The defense cannot solely rely upon the constitutional presumption of innocence for, while it is constitutional, the presumption is not conclusive. Notably, the accused-appellant herself stated in her brief that[31] "no proof was proffered by the accused-appellant of the police officers' alleged ill motive."

Stated otherwise, the narration of the incident by law enforcers, buttressed by the presumption that they have regularly performed their duties in the absence of convincing proof to the contrary, must be given weight.[32]

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[27] Art. III, Section 14 (2), 1987 Constitution.

[28] Sec. 3, Rule 131, Rules on Criminal Procedure.

[29] TSN, 29 August 2003, pp. 3-4.

[30] TSN, 5 February 2004, pp. 6-7.

[31] *Rollo*, p. 283.

[32] Remedial Law, Revised Rules on Evidence, Oscar M. Herrera, 1999 Edition, p. 82; *People v. Lopez*, G.R. No. 71875, Jan 25, 1988; *People v. Mauyao*, G.R. No. 84525, 6 April 1992, 207 SCRA 732, 738.

We now deal with the late submission about the validity of the search warrant.

A party cannot change his theory on appeal nor raise in the appellate court any question of law or of fact that was not raised in the court below or which was not within the issue raised by the parties in their pleadings.[33]

In a long line of cases, this Court held that points of law, theories, issues and arguments not adequately brought to the attention of the trial court ordinarily will not be considered by a reviewing court as they cannot be raised for the first time on appeal because this would be offensive to the basic rules of fair play, justice and due process.[34]

We opt to get out of the ordinary in this case. After all, technicalities must serve, not burden the cause of justice. It is a prudent course of action to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice.[35]

We thus allow the new arguments for the final disposition of this case.

The contention of the accused-appellant, as asserted through the Public Attorney's Office, is that the issued search warrant was not based on probable cause.[36] The accused-appellant relied heavily on its argument that SPO4 Gotidoc, as the applicant of the search warrant, did not testify on facts personally known to

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[33] *Sari Sari Group of Companies, Inc. v. Piglas Kamao* (Sari Sari Chapter), G.R. No. 164624, 11 August 2008, 561 SCRA 569, 589.

[34] *Philippine Commercial and International Bank v. Custodio*, G.R. No. 173207, 14 February 2008, 545 SCRA 367, 380; *Heirs of Cesar Marasigan v. Marasigan*, G.R. No. 156078, 14 March 2008, 548 SCRA 409, 431-432; *Eastern Assurance and Surety Corporation v. Con-Field Construction and Development Corporation*, G.R. No. 159731, 22 April 2008, 552 SCRA 271, 279-280.

[35] *Peñoso v. Dona*, G.R. No. 154018, 3 April 2007, 520 SCRA 232, 239-240.

[36] *Rollo*, p. 280.

him but simply relied on stories that the accused- appellant was peddling illegal drugs.[37]

The requisites for the issuance of a search warrant are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized.[38]

On the other hand, probable cause means such facts and circumstances which would lead a reasonable discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched.[39]

Based on the records, the Court is convinced that the questioned search warrant was based on a probable cause. A portion of the direct testimony of SPO4 Gotidoc is hereby quoted:

Q: What is your basis for applying for search warrant against the accused?

A: Because there were many persons who were going to her place and we've been hearing news that she is selling prohibited drugs and some of them were even identified, sir.

Q: But you did not conduct any surveillance before you applied for search warrant?

A: Prior to the application for search warrant, we conducted surveillance already.

Q: Because personally you heard that the accused was dealing prohibited drugs and that was the basis for you to apply for search warrant with Branch 66?

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[37] *Id.* at 282.

[38] *Abuan v. People*, G.R. No. 168773, 27 October 2006, 505 SCRA 799, 822.

[39] *Betoy, Sr. vs. Coliflores*, A.M. No. MTJ-05-1608, 28 February 2006, 483 SCRA 435, 444.

A: Yes, sir.[40] (Emphasis supplied)

x x x x x x x x x

Section 6, Rule 126 of the *Rules on Criminal Procedure* provides that:

If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by these Rules. (Emphasis supplied)

There is no general formula or fixed rule for the determination of probable cause since the same must be decided in light of the conditions obtaining in given situations and its existence depends to a large degree upon the findings or opinion of the judge conducting the examination.[41]

It is presumed that a judicial function has been regularly performed, absent a showing to the contrary. A magistrate's determination of a probable cause for the issuance of a search warrant is paid with great deference by a reviewing court, as long as there was substantial basis for that determination.[42]

The defense's reliance of the quoted testimony of the police officer alone, without any other evidence to show that there was indeed lack of personal knowledge, is insufficient to overturn the finding of the trial court. The accused-appellant, having failed to present substantial rebuttal evidence to defeat the presumption of regularity of duty of the issuing judge, will not be sustained by this Court.

WHEREFORE, the instant appeal is *DENIED*. Accordingly, the decision of the Court of Appeals in CA-G.R. CR. No. 28482 is hereby *AFFIRMED*. Costs against the appellant.

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[40] TSN, 29 August 2003, p. 7.

[41] *Lastrilla v. Granda*, G.R. No. 160257, 31 January 2006, 481 SCRA 324, 347.

[42] *People v. Choi*, G.R. No. 152950, 3 August 2006, 497 SCRA 547, 556.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 176479. October 6, 2010]

RIZAL COMMERCIAL BANKING CORPORATION, *petitioner, vs.* **PEDRO P. BUENAVENTURA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED.— It is settled that factual findings of the trial court, when adopted and confirmed by the CA, are binding and conclusive on this Court and will generally not be reviewed on appeal. Inquiry into the veracity of the CA's factual findings and conclusions is not the function of the Supreme Court, because this Court is not a trier of facts. Neither is it our function to reexamine and weigh anew the respective evidence of the parties.

2. COMMERCIAL LAW; MORTGAGE; FORECLOSURE THEREOF.— Foreclosure is valid only when the debtor is in default in the payment of his obligation. It is a necessary consequence of non-payment of mortgage indebtedness. As a rule, the mortgage can be foreclosed only when the debt remains unpaid at the time it is due. In a real estate mortgage, when the principal obligation is not paid when due, the mortgagee has the right to foreclose on the mortgage, to have the property seized and sold, and to apply the proceeds to the obligation.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; NATURE AND EFFECT OF OBLIGATIONS; THAT RECEIPT OF LATER INSTALLMENT OF DEBT RAISES THE

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[*] Additional member per Raffle dated 1 March 2010.

PRESUMPTION THAT PREVIOUS INSTALLMENTS HAD BEEN PAID; APPLICATION IN CASE AT BAR.— RCBC's own Amortization Schedule readily shows the applicability of Article 1176 of the Civil Code, which states: Art. 1176. The receipt of the principal by the creditor, without reservation with respect to the interest, shall give rise to the presumption that the said interest has been paid. *The receipt of a later installment of a debt without reservation as to prior installments, shall likewise raise the presumption that such installments have been paid.* Respondent's passbooks indicate that RCBC continued to receive his payments even after it made demands for him to pay his past due accounts, and even after the auction sale. RCBC cannot deny receipt of the payments, even when it claims that the deposits were "not withdrawn." It is not respondent's fault that RCBC did not withdraw the money he deposited. His obligation under the mortgage agreement was to deposit his payment in the savings account he had opened for that purpose, in order that RCBC may debit the amount of his monthly liabilities therefrom. He complied with his part of the agreement. This bolsters the conclusion of the CA that respondent had no unpaid installments and was not in default as would warrant the application of the acceleration clause and the subsequent foreclosure and auction sale of the property.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
Franklin Delano M. Sacmar for respondent.

R E S O L U T I O N

NACHURA,[*] *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Petitioner Rizal Commercial Banking Corporation (RCBC) assails the Decision[1] dated

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[*] In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 28, 2010.

[1] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Edgardo P. Cruz and Enrico A. Lanzana, concurring; *rollo*, pp. 41-52.

November 21, 2006 and the Resolution[2] dated January 30, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 82079.

Respondent Pedro P. Buenaventura and his first wife (now deceased) owned a townhouse unit in Casa Nueva Manila Townhouse, Quezon City. On December 27, 1994, they obtained a loan from petitioner. As security for the loan, they mortgaged the townhouse to petitioner.[3] Under the loan agreement, respondent was to pay RCBC a fixed monthly payment with adjustable interest for five years. For this purpose, respondent opened an account with RCBC's Binondo branch from which the bank was to deduct the monthly amortizations.[4]

On April 19, 1999, respondent received a Notice of Public Auction of the mortgaged townhouse unit. He wrote Atty. Saturnino Basconcillo, the notary public conducting the auction sale, demanding the cancellation of the auction sale. However, the notary public proceeded with the public sale on May 25, 1999, where RCBC emerged as the highest bidder. The Notary Public's Certificate of Sale was registered with the Register of Deeds on September 28, 2000.

On September 18, 2001, respondent filed with the Regional Trial Court (RTC) of Quezon City a complaint for Annulment of Sale and Damages against RCBC, notary public Saturnino Basconcillo, and the Registrar of Deeds of Quezon City. Respondent prayed that the RTC (1) annul the extra-judicial foreclosure and sale of the property; (2) cancel the Certificate of Sale; and (3) direct the payment of ₱170,000.00 as actual damages, ₱100,000.00 as moral damages, ₱50,000.00 as exemplary damages, ₱70,000.00 as attorney's fees, plus ₱2,500.00 for every court appearance of his counsel, and the costs of the suit.

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[2] *Id.* at 54.

[3] *Id.* at 9.

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

RCBC failed to timely file an Answer and was declared in default. Based on respondent's evidence, the RTC rendered a decision,[5] the dispositive portion of which reads:

> WHEREFORE, judgment is rendered:
>
> 1. Declaring the foreclosure sale of the plaintiff's (respondent's) property covered by Transfer Certificate of Title No. 39234 of the Registry of Deeds of Quezon City conducted on May 25, 1999 by notary public ATTY. SATURNINO M. BASCONCILLO, and the resulting *certificate of sale* issued by said notary public on May 27, 1999 null and void and of no effect; and
>
> 2. Ordering RIZAL COMMERCIAL BANKING CORPORATION to pay to the plaintiff ₱100,000.00 as moral damages; ₱50,000.00 as exemplary damages; ₱70,000.00 as actual damages; and the costs of suit; and
>
> 3. Dismissing the *complaint* as against ATTY. SATURNINO M. BASCONCILLO and the REGISTRAR OF DEEDS OF QUEZON CITY.
>
> SO ORDERED.[6]

The RTC found that respondent made regular payments of the monthly amortizations as they fell due, as evidenced by his passbooks and the various deposit slips acknowledged by RCBC.[7] The RTC also found that RCBC's own computer-generated amortization schedule showed that no balance was due respondent after his last payment on March 27, 2000.[8]

RCBC filed a motion for reconsideration. It was denied in a resolution[9] dated February 11, 2004.

RCBC then appealed to the CA. In the assailed November 21, 2006 Decision,[10] the CA affirmed the RTC's decision

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[5] Penned by Judge Lucas P. Bersamin (now a member of this Court); *id.* at 45-48.

[6] *Id.* at 48.

[7] *Id.* at 46.

[8] *Id.*

[9] Penned by Judge Hilario L. Laqui; *id.* at 49-51.

[10] *Supra* note 1.

with modification, deleting the award of moral and exemplary damages.

The CA ruled that the foreclosure sale was premature. It held that respondent made valid and sufficient payments on his loan obligation. It found respondent's evidence as sufficient proof to negate default on his part in paying the monthly amortizations. It noted that sometime in September 1996, RCBC sent respondent a letter informing the latter of past due accounts since January 27, 1996, which would warrant the application of the acceleration clause. The CA, however, deemed the same to have been "cured" by a subsequent Amortization Schedule given by the bank to respondent stating that, as of March 27, 2000, he no longer had an unpaid balance on his loan. The CA said this clearly suggests the uninterrupted receipt by RCBC of the installments, thus, negating the claim that respondent was in default. It also noted respondent's evidence (his passbooks) which indicated that he had sufficient funds to cover the remaining balance of his loan at the time of the foreclosure sale. Moreover, the CA said that based on the term of the loan (April 27, 1995 to March 27, 2000), the loan was not yet due and demandable at the time of the foreclosure.

On the other hand, the CA found the award of moral and exemplary damages unwarranted. It held that since respondent irregularly paid his monthly amortizations, RCBC did not act maliciously and in bad faith when it initiated the foreclosure proceedings.

RCBC moved for reconsideration of the Decision, but it was denied in a Resolution dated January 30, 2007.

In this petition, RCBC argues that the CA Decision is not in accord with law and applicable jurisprudence. In particular, it assails the CA's finding that respondent was not in default at that time of the foreclosure of the mortgage. It says that the foreclosure sale was done in the lawful exercise of its right as mortgagee of the property as, at the time of the foreclosure sale, respondent had unpaid amortizations. The bank points out that respondent made payments until March 2000, but these

payments were not withdrawn by the bank and credited to respondent's loan payments but remained in his account.

In his Comment, respondent avers that he never received a copy of petitioner's Motion for Extension of Time to file the Petition for Review in violation of Rule 45, Section 2. Thus, he argues that the motion is without legal effect, and therefore, the petition has been filed out of time. He also alleges that the petition lacks the requisite affidavit of material dates. Respondent likewise posits that the petition does not raise questions of law. He argues that the issue raised by petitioner, while purportedly a question of law, in reality questions the sufficiency of evidence relied upon by both the trial court and the CA, which this Court has held in the past to be a question of fact.

In its Reply, petitioner counters respondent's arguments by saying that the issue it raised — whether respondent's subsequent payment of unpaid amortizations done after the foreclosure and public sale of the property invalidates the extra-judicial foreclosure and public sale proceedings — is a purely legal question.

The petition lacks merit and must be denied.

Clearly, the petition disputes the factual findings of the CA,[11] which, in turn, merely affirmed the factual findings of the RTC.

It is settled that factual findings of the trial court, when adopted and confirmed by the CA, are binding and conclusive on this Court and will generally not be reviewed on appeal. Inquiry into the veracity of the CA's factual findings and conclusions is not the function of the Supreme Court, because this Court is not a trier of facts. Neither is it our function to reexamine and weigh anew the respective evidence of the parties.[12]

While it is true that there are well-established exceptions to this principle, petitioner in this case has failed to show that this case falls under one of such exceptions.

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[11] *Rollo*, p. 29.

[12] *Development Bank of the Philippines v. Licuanan*, G.R. No. 150097, February 26, 2007, 516 SCRA 644, 651. (Citations omitted.)

The RTC and the CA both found that respondent was not in default on the monthly payments of his loan obligation.

These findings are supported by the evidence on record.

At the time of foreclosure — April 1999 — respondent's savings account deposits showed a balance of ₱852,913.26.[13] This was more than enough to cover whatever amortizations were due from him at that time. Moreover, the Amortization Schedule shows that, as of April 27, 1999, respondent's loan account with the bank totaled only ₱269,023.38.[14] The same schedule shows that, by March 27, 2000, he had "0.00" balance left to pay,[15] meaning he had paid his loan in full.

Foreclosure is valid only when the debtor is in default in the payment of his obligation.[16] It is a necessary consequence of non-payment of mortgage indebtedness. As a rule, the mortgage can be foreclosed only when the debt remains unpaid at the time it is due.[17]

In a real estate mortgage, when the principal obligation is not paid when due, the mortgagee has the right to foreclose on the mortgage, to have the property seized and sold, and to apply the proceeds to the obligation.[18]

RCBC's own Amortization Schedule readily shows the applicability of Article 1176 of the Civil Code, which states:

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[13] Records, p. 224.

[14] *Id.* at 225.

[15] *Id*.

[16] *Development Bank of the Philippines v. Licuanan, supra* note 12, at 650, citing *State Investment House, Inc. v. Court of Appeals*, 215 SCRA 734, 744 (1992).

[17] *Producers Bank of the Phil. v. Court of Appeals*, 417 Phil. 646, 656 (2001).

[18] *BPI Family Savings Bank, Inc. v. Sps. Veloso*, 479 Phil. 627, 632 (2004); *China Banking Corp. v. CA*, 333 Phil. 158, 171 (1996).

Art. 1176. The receipt of the principal by the creditor, without reservation with respect to the interest, shall give rise to the presumption that the said interest has been paid.

The receipt of a later installment of a debt without reservation as to prior installments, shall likewise raise the presumption that such installments have been paid.[19]

Respondent's passbooks indicate that RCBC continued to receive his payments even after it made demands for him to pay his past due accounts, and even after the auction sale.

RCBC cannot deny receipt of the payments, even when it claims that the deposits were "not withdrawn."[20] It is not respondent's fault that RCBC did not withdraw the money he deposited. His obligation under the mortgage agreement was to deposit his payment in the savings account he had opened for that purpose, in order that RCBC may debit the amount of his monthly liabilities therefrom. He complied with his part of the agreement.

This bolsters the conclusion of the CA that respondent had no unpaid installments and was not in default as would warrant the application of the acceleration clause and the subsequent foreclosure and auction sale of the property.

WHEREFORE, the foregoing premises considered, the petition is *DENIED*. The Decision dated November 21, 2006 and the Resolution dated January 30, 2007 of the Court of Appeals in CA-G.R. CV No. 82079 are hereby *AFFIRMED*.

SO ORDERED.

Velasco, Jr.,[**] *Peralta, Mendoza,* and *Sereno,*[***] *JJ.,* concur.

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[19] Emphasis supplied.

[20] *Rollo,* p. 33.

[**] Additional member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 897 dated September 28, 2010.

[***] Additional member in lieu of Associate Justice Roberto A. Abad per Special Order No. 903 dated September 28, 2010.

SECOND DIVISION

[G.R. No. 177420. October 6, 2010]

SPOUSES ANTHONY L. NGO AND SO HON K. NGO and SPOUSES LUIS M. LITAM, JR. AND LUZVIMINDA C. LITAM, *petitioners, vs.* **ALLIED BANKING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; REQUISITES.— Section 3, Rule 58 of the 1997 Revised Rules of Civil Procedure provides that a writ of preliminary injunction, whether mandatory or prohibitory, may be granted if the following requisites are met: (1) The applicant must have a clear and unmistakable right, that is a right *in esse*; (2) There is a material and substantial invasion of such right; (3) There is an urgent need to issue the writ in order to prevent irreparable injury to the applicant; and (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.

2. ID.; ID.; ID.; PRELIMINARY MANDATORY INJUNCTION; PROPRIETY THEREOF.— A preliminary mandatory injunction is more cautiously regarded than a mere prohibitive injunction since, more than its function of preserving the status quo between the parties, it also commands the performance of an act. Accordingly, the issuance of a writ of preliminary mandatory injunction is justified only in a clear case, free from doubt or dispute. When the complainant's right is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of a writ of preliminary mandatory injunction is improper. While it is not required that the right claimed by applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.

3. ID.; ID.; ID.; DISCRETION OF TRIAL COURT TO GRANT OR DENY THE SAME RESPECTED IN THE ABSENCE OF ABUSE OF DISCRETION.— Generally, a trial court's decision to grant or to deny injunctive relief will not be set

> aside on appeal unless the court abused its discretion. In granting or denying injunctive relief, a court abuses its discretion when it lacks jurisdiction, fails to consider and make a record of the factors relevant to its determination, relies on clearly erroneous factual findings, considers clearly irrelevant or improper factors, clearly gives too much weight to one factor, relies on erroneous conclusions of law or equity, or misapplies its factual or legal conclusions. x x x Settled is the rule that courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial.

APPEARANCES OF COUNSEL

Edito A. Rodriguez for petitioners.
Paul A. Bernardino for respondent.

R E S O L U T I O N

NACHURA,[*] *J.*:

Assailed in this petition for review on *certiorari*[1] are the April 19, 2006 Decision[2] and the April 2, 2007 Resolution[3] of the Court of Appeals (CA), which lifted the writ of preliminary mandatory injunction issued on October 1, 2002[4] by the Regional Trial Court (RTC) of Quezon City, Branch 98.

The facts:

In a Complaint for Damages with prayer for the issuance of a Preliminary Mandatory Injunction[5] filed with the RTC on

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[*] In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 28, 2010.

[1] RULES OF COURT, Rule 45.

[2] Penned by Associate Justice Santiago Javier Ranada, with Associate Justices Roberto A. Barrios and Mario L. Guariña III, concurring; *rollo*, pp. 41-48.

[3] *Id.* at 50.

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

[5] *Id.* at 51-60.

May 9, 2002, petitioner-spouses alleged in the main that Allied Banking Corporation (Allied Bank) unlawfully and unjustifiably refused to discharge/release the real estate mortgage constituted on the two lots of spouses Anthony Ngo and So Hon Ngo, and withheld the Owner's Duplicate Copy of the Transfer Certificate of Title (TCT) of the said lots, despite spouses Ngo's full payment of the ₱12 million loan secured by the mortgage.

Petitioners averred that the funds used by spouses Ngo in paying for the loan were the proceeds of the sale of the lots to spouses Luis Litam, Jr. and Luzviminda Litam; and that the sale was known to and permitted by Allied Bank through its Manager, Rodolfo Jose.[6] The bank, however, vehemently denied giving its imprimatur to the sale.[7]

Allied Bank admitted the satisfaction of the ₱12 million loan but clarified that the real estate mortgage on the lots still secures the unpaid ₱42,900,000.00 loan of Civic Merchandising, Inc., for which Anthony Ngo stands as a surety. In support thereof, the bank presented the *Continuing Guaranty/Comprehensive Surety Agreement* executed by Anthony Ngo, both in his personal capacity and as the company's president and general manager.

On October 1, 2002, after hearing the parties, the RTC ordered the issuance of a writ of preliminary injunction, directing Allied Bank to discharge the real estate mortgage constituted on the subject properties, and to release to spouses Ngo the owner's copy of the TCTs of the lots. [8]

When its motion for reconsideration[9] of the foregoing order was denied,[10] Allied Bank elevated the incident to the CA by way of a special civil action for *certiorari*.

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[6] Complaint; *id.*

[7] Respondent's *Answer with Opposition to the Prayer for Preliminary Mandatory Injunction & Compulsory Counterclaim*; *id.* at 61-72.

[8] *Supra* note 4.

[9] *Rollo*, pp. 84-94.

[10] *Id.* at 134-140.

On April 19, 2006, the CA annulled the RTC's orders upon finding that petitioner-spouses failed to establish a clear and unmistakable right to warrant the issuance of the provisional injunctive writ against Allied Bank.[11] This was affirmed in its April 02, 2007 Resolution[12] denying petitioner-spouses' motion for reconsideration.

Aggrieved, petitioner-spouses interposed the instant recourse, ascribing the following errors to the CA:

I.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE REAL ESTATE MORTGAGE EXECUTED BY SPS. NGO SECURED THE CREDIT ACCOMODATION OF CIVIC MERCHANDISING, INC.

II.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE PETITIONERS FAILED TO ESTABLISH A CLEAR AND UNMISTAKABLE RIGHT INVADED BY THE RESPONDENT TO WARRANT THE ISSUANCE OF THE WRIT OF PRELIMINARY MANDATORY INJUNCTION.[13]

The petition lacks merit.

Section 3, Rule 58 of the 1997 Revised Rules of Civil Procedure provides that a writ of preliminary injunction, whether mandatory or prohibitory, may be granted if the following requisites are met:

(1) The applicant must have a clear and unmistakable right, that is a right *in esse*;

(2) There is a material and substantial invasion of such right;

(3) There is an urgent need to issue the writ in order to prevent irreparable injury to the applicant; and

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[11] CA Decision, *supra* note 2.

[12] *Supra* note 3.

[13] *Rollo,* pp. 18-19.

(4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[14]

A preliminary mandatory injunction is more cautiously regarded than a mere prohibitive injunction since, more than its function of preserving the status quo between the parties, it also commands the performance of an act.[15] Accordingly, the issuance of a writ of preliminary mandatory injunction is justified only in a clear case, free from doubt or dispute.[16] When the complainant's right is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of a writ of preliminary mandatory injunction is improper.[17] While it is not required that the right claimed by applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.[18]

Petitioner-spouses anchored their right to an injunctive writ on Payment Slip No. 160989, issued by Allied Bank, evidencing their full payment of the ₱12 million loan on February 26, 2002. Such payment, according to spouses Ngo, vested in them the right to demand: (1) the release/cancellation of the real estate mortgage securing such debt; and (2) the return of the owner's copy of the TCTs of the subject lots so they can cause the transfer thereof to their buyers, spouses Litam.

The bank, on the other hand, admitted the settlement of the ₱12 million loan, but insisted that the real estate mortgage executed by spouses Ngo also covers the subsisting ₱42,900,000.00 loan

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[14] See *Philippine Leisure and Retirement Authority v. Court of Appeals*, G.R. No. 156303, December 19, 2007, 541 SCRA 85, 100.

[15] *Gateway Electronics Corporation v. Land Bank of the Philippines*, G.R. Nos. 155217 and 156393, July 30, 2003, 407 SCRA 454, 462.

[16] *Id*.

[17] *China Banking Corporation v. Co*, G.R. No. 174569, September 17, 2008, 565 SCRA 600.

[18] *Mizona v. Court of Appeals*, 400 Phil. 587 (2000); *Developers Group of Companies, Inc. v. Court of Appeals*, G.R. No. 104583, March 8, 1993, 219 SCRA 715, 721.

extended to Civic Merchandising, Inc., which is secured by a suretyship agreement assumed by Anthony Ngo. In support thereof, Allied Bank emphasized the following provisions of the real estate mortgage:

That, for and consideration of credit accommodations obtained from the MORTGAGEE, detailed as follows:

Nature	*Amount or Line*
LOAN LINE	₱10,000,000.00

and **to secure the payment of** the same and **all other obligations of the MORTGAGOR to the MORTGAGEE of whatever kind and nature, whether such obligations have been contracted before, during or after the constitution and execution of this mortgage, including interest and expenses or any other obligation owing to the MORTGAGEE whether direct or indirect, principal or secondary, as appears in the accounts, books and records of the MORTGAGEE**, the MORTGAGOR does hereby transfer and convey by way of mortgage unto the MORTGAGEE, its successors or assigns, the parcels of land which are described in the list inserted on the back of this document and/or appended hereto, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon, of which the MORTGAGOR declares that he/it is the absolute owner free from liens and encumbrances.[19]

Allied Bank also pointed out the complementary terms of the *Continuing Guaranty/Comprehensive Surety Agreement* signed by Anthony Ngo, *viz*.:

II. **As security for and all indebtedness of obligations of the undersigned to you now existing or hereafter arising hereunder or otherwise, you are hereby given the right to retain, and you are hereby given a lien upon, all money or other property, and/or proceeds thereof, which have been or may hereafter be deposited or left with you** (or with any third party acting on your behalf) **by or for the account or credit of the undersigned**, including (without limitation of the foregoing)

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[19] CA *rollo*, p. 52. (Emphasis supplied.)

that in safekeeping or in which the undersigned may have any interest.[20]

In granting petitioners' application for a preliminary mandatory injunction, the RTC reasoned in this manner:

> It is undisputed that the real estate mortgage annotated at the dorsal portion of TCT Nos. 81647 and 81648 had already been paid by [petitioners] Ngo as of February 26, 2002. The original obligation having been paid, it becomes the duty of the [respondent] to release the title of the properties and to cancel the real estate mortgage.[21]

Generally, a trial court's decision to grant or to deny injunctive relief will not be set aside on appeal unless the court abused its discretion. In granting or denying injunctive relief, a court abuses its discretion when it lacks jurisdiction, fails to consider and make a record of the factors relevant to its determination, relies on clearly erroneous factual findings, considers clearly irrelevant or improper factors, clearly gives too much weight to one factor, relies on erroneous conclusions of law or equity, or misapplies its factual or legal conclusions.[22]

In this case, the mere fact of payment of the ₱12 million loan is a scant justification for the issuance of the writ. The RTC accorded too much weight thereon and deliberately ignored other relevant facts alleged in the pleadings and shown in the annexes submitted by the parties, specifically the real estate mortgage and the *Continuing Guaranty/Comprehensive Surety Agreement*. The covenants contained in the said agreements, coupled with the bank's categorical denial that it permitted the sale of the mortgaged properties to spouses Litam, cast serious doubts on, and pose a substantial challenge against, the rights claimed by petitioner-spouses.

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[20] *Id.* at 56. (Emphasis supplied.)

[21] *Supra* note 4, at 82.

[22] 42 Am.Jur.2d, pp. 576-577, as cited in *Almeida v. Court of Appeals*, 489 Phil. 648 (2005).

Contrary to the RTC's ruling, the rights claimed by petitioners are less than clear and far from being unmistakable. Consequently, without such unequivocal right, the possibility of irreparable damage would not justify injunctive relief in petitioners' favor. In addition, the possibility of damage to petitioners is remote compared to the immediate and serious injury that respondent will suffer if the writ is implemented. In this regard, we quote with approval the ensuing pronouncement of the CA:

> Neither is there an urgent and paramount necessity for the writ to prevent serious damage to the spouses Ngo and Litam. Actually, it is the [respondent] who stands to suffer great damage and injury, as it stands to lose its security on a ₱42,900,000.00 loan, exclusive of interest and penalties, if the writ is implemented.[23]

Further, in issuing the preliminary mandatory injunction, which was the main prayer in the complaint, the RTC effectively concluded the main case without proper hearing on the merits as there was practically nothing left to be determined except petitioner-spouses' claim for damages.

Settled is the rule that courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial.[24]

Accordingly, we hold that the RTC improperly issued the writ of preliminary injunction and the CA was correct in annulling the same.

However, the CA erred in declaring that "*the mortgage over the properties, secured not merely the credit accommodation in the amount of ₱12,000,000.00, but likewise the credit*

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[23] *Supra* note 2, at 46.

[24] *Penson v. Maranan*, G.R. No. 148630, June 20, 2006, 491 SCRA 396; *Mizona v. Court of Appeals, supra* note 18; *Searth Commodities Corp. v. Court of Appeals*, G.R. No. 64220, March 31, 1992, 207 SCRA 622; *Rivas v. Securities and Exchange Commission*, G.R. No. 53772, Oct. 4, 1990, 190 SCRA 295; *Government Service Insurance System v. Florendo*, G.R. No. L-48603, September 29, 1989, 178 SCRA 76; *Ortigas and Company, Limited Partnership v. Court of Appeals*, No. 79128, June 16, 1988, 162 SCRA 165.

accommodation of Civic Merchandising and the latter's outstanding liability in the amount of ₱42,900,000.00." It is a prejudgment of the main case, and a premature acceptance of a proposition which petitioners are still bound to prove in a full-blown trial. As discussed above, the credit accommodation given to Civic Merchandising, Inc. casts a cloud of doubt over the rights claimed by petitioners. But such doubt merely precluded the issuance of an injunctive writ; it did not conclusively establish that the real estate mortgage, indeed, also secured Civic Merchandising, Inc.'s loan. This notwithstanding, the resulting disposition arrived at by the CA is still correct and we concur therewith.

WHEREFORE, premises considered, the Petition is hereby *DENIED* and the assailed April 19, 2006 Decision and the April 2, 2007 Resolution of the Court of Appeals are *AFFIRMED*.

SO ORDERED.

Velasco, Jr.,[**] *Peralta, Mendoza,* and *Sereno,*[***] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 179543. October 6, 2010]

CAMPER REALTY CORP., *petitioner, vs.* **MARIA NENA PAJO-REYES represented by her Attorney-in-Fact Eliseo B. Ballao, AUGUSTO P. BAJADO, RODOLFO PAJO and GODOFREDO PAJO, JR.,** *respondents.*

[**] Additional member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 897 dated September 28, 2010.

[***] Additional member in lieu of Associate Justice Roberto A. Abad per Special Order No. 903 dated September 28, 2010.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF PLEADINGS; SERVICE OF DECISION BY REGISTERED MAIL; MUST BE RECEIVED BY ONE AUTHORIZED TO ACCEPT SERVICE.— The records show that service *via* registered mail of the copy of the decision addressed to petitioner was made on December 28, 2006 on a certain Daisy Belleza (Daisy) who, petitioner avers, was not authorized to receive the copy, she being a mere househelper of petitioner's director Arturo F. Campo. Although petitioner's principal office and Campo's residence are housed in the same building, Campo's househelper Daisy cannot be considered as a person-in-charge of petitioner's office to consider her receipt of copy of the decision on behalf of petitioner. Neither can the househelper's receipt suffice as service to Campo, even if he is a member of petitioner's Board of Directors, absent a showing that he had been authorized by petitioner to accept service.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; SALE BY AGENT INVOLVING REAL PROPERTY REQUIRES WRITTEN AUTHORITY.— In sales involving real property or any interest therein, a written authority in favor of the agent is necessary, otherwise the sale is void.

3. ID.; ID.; ID.; PURCHASER OF REGISTERED LAND IN GOOD FAITH.— *Cayana v. Court of Appeals* reiterates a well-ensconced doctrine re. a purchaser in good faith: . . . a person dealing with registered land has a right to rely on the Torrens certificate of title and to dispense with the need of inquiring further except when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or status of the title of the property in litigation. The presence of anything which excites or arouses suspicion should then prompt the vendee to look beyond the certificate and investigate the title of the vendor appearing on the face of said certificate. One who falls within the exception can neither be denominated an innocent purchaser for value nor a purchaser in good faith; and hence does not merit the protection of the law. A forged deed can legally be the root of a valid title when an innocent purchaser for value intervenes. For a prospective buyer of a property

registered under the Torrens system need not go beyond the title, especially when he has no notice of any badge of fraud or defect that would place him on guard. His rights are thus entitled to full protection, for the law considers him an innocent purchaser.

4. ID.; LEGAL INTEREST; INTEREST DUE ON THE REIMBURSEMENT OF PURCHASE PRICE IS SIX PERCENT (6%) PER ANNUM FROM DATE OF FILING OF COMPLAINT.— A word on the legal interest due on the reimbursement of the purchase price to Nena and her remaining co-owner Godofredo, Jr. In accordance with *Eastern Shipping Lines v. Court of Appeals,* since the claim does not involve a loan or forbearance of money, imposition of interest rate of six percent (6%) per annum from date of filing of the complaint is in order.

APPEARANCES OF COUNSEL

Largo Bernales-Largo Balucos Tumanda & Hernandez for petitioner.

Dominguez paderna & Tan Law Offices Co. for Maria Nena Pajo-Reyes.

D E C I S I O N

CARPIO MORALES, *J.*:

Rodolfo Pajo (Rodolfo) caused the notarization on March 27, 1974 by Atty. Camilo Naraval of a Special Power of Attorney (SPA) executed by him and purportedly by his four siblings Maria Nena Pajo Reyes (Nena), Godofredo, Jr. (Godofredo), Tito (Tito), and Isaias (Isaias). The SPA authorized Rodolfo to sell a parcel of land (the property) containing an area of 8,060 square meters, situated in Catalunan Pequeño, Davao City, and covered by Transfer Certificate of Title (TCT) No. T-41086 in the name of the siblings.

A day after the notarization of the SPA or on March 28, 1974, Rodolfo sold the property to Ligaya *Vda. De* Bajado (Ligaya) who thereafter caused the cancellation of the title thereto

and the issuance on April 1, 1974 of TCT No. T-43326 in her name.

Two days after he notarized the SPA, Atty. Naraval observed that all the signatures therein, except that of Rodolfo, were forged, drawing him to write Rodolfo's co-owners respecting his cancellation of the SPA from his notarial register.

After Ligaya passed away, the property was bequeathed to her son-respondent Augusto Bajado (Augusto) via Partition Agreement dated June 14, 1985. Ligaya's title was thereafter cancelled and TCT No. T- 118270 was, in its stead, issued on July 16, 1986 in the name of Augusto.

In 1992, Augusto caused the division of the property into two. Before the completion of the technical survey of the property or on August 31, 1992, Augusto sold the bigger portion thereof consisting of 7,420 square meters, later covered by TCT No. 185958 issued on December 11, 1992 still in his name, to Camper Realty Corporation (petitioner). Augusto retained ownership of the remaining 640 square meters of the property (covered by TCT No. 185959 in his name.

By Augusto's claim, despite his sale of the 7,420 square meter lot to petitioner, petitioner acquiesced to the issuance of the title in his name since its representative, Jose Campo, was still out of the country and he would thus not be available to sign the pertinent documents to effect the transfer. TCT No. 195213 was finally issued in petitioner's name on May 5, 1993.

On April 2, 1993, 19 years after Rodolfo's co-owners of the property were notified two days after the notarization of SPA of the forged signatures, Nena, Rodolfo's sister-co-owner, filed a complaint against Augusto and her brothers Rodolfo and Godofredo, Jr. for "*declaration of nullity and/or inexistence of contracts, cancellation of title, quieting of title and possession, damages and attorney's fees with prayer for writ of preliminary injunction and a temporary restraining order,*"[1] before the

[1] Records, p. 1.

Regional Trial Court (RTC) of Davao City. Godofredo, Jr. was impleaded as defendant allegedly because he refused to be a co-plaintiff.

Nena alleged that only her brother Godofredo, Jr. remained as co-owner, her other brothers Rodolfo and Tito having ceded to her their respective shares in the property by a notarized Deed of Confirmation on May 5, 1976; and her brother Isaias had died without issue.

By Order of April 7, 1993, the RTC issued a Temporary Restraining Order restraining the "defendants Augusto P. Bajado, his privies and all persons working for him or under his control or order to cease and desist from committing acts of harassment against the plaintiff (Nena) . . ."[2]

On learning of Augusto's sale of part of his interest in the property to petitioner, Nena, by Amended Complaint dated April 20, 1993, impleaded petitioner as a necessary party. Nena contended that no right could have been transmitted to Ligaya and the subsequent transferees, the SPA being a forged document.

By Decision of September 5, 1997,[3] Branch 16 of the Davao RTC dismissed Nena's complaint, disposing as follows:

PREMISES CONSIDERED, judgment, is hereby rendered:

1) dismissing plaintiff's complaint against defendants Augusto Bajado and Camper Realty Corporation;

2) ordering defendant Rodolfo Pajo to pay plaintiff the sums of:

   a) ₱50,000.00 as moral damages;
   b) ₱10,000.00 as exemplary damages; and
   c) ₱10,000.00 as attorney's fees; and

3) ordering the dismissal of defendants Augusto Bajado and Camper Realty Corporation counterclaims.

SO ORDERED. (underscoring supplied)[4]

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[2] *Id.* at 37.

[3] *Id.* at 222-227.

[4] *Id.* at 227.

The trial court, albeit finding that Rodolfo's co-owners' signatures on the SPA were forged, held that Nena is guilty of laches and declared the validity of the transfer of the property to Augusto by way of judicial partition, and of the subsequent sale to petitioner in this wise:

> *Titles to the property were already under the names of the transferors at the time of the transfer* — From Ligaya Vda. de Bajado to Augusto Bajado thru succession/partition and from Augusto Majado to Camper Realty Corporation by Deed of Sale. On this basis, the Court cannot declare the nullity or inexistence of the succeeding contracts, to wit: Partition Agreement and the Deed of Sale executed by Augusto Bajado to Camper Realty Corporation, much more cancel the Certificate of Title which at present is under Camper's name for lot previously titled No. 185958 now 195213 and Augusto Bajado for the smaller lot under Title No. 185959. This aside, the Court also finds plaintiff Maria Nena Pajo-Reyes guilty of laches — defined as the failure or neglect to do that which, by exercising due diligence could or should have been done earlier; x x x[5] (underscoring supplied)

On appeal, the Court of Appeals (CA), by the challenged Decision,[6] **reversed** the trial court's decision. It demurred to the trial court's finding that Nena is guilty of *laches*. It held that Augusto, as an heir of Ligaya, did not acquire a better right over the property, *viz*:

> x x x There was no valid transfer to Ligaya and, accordingly, her son (Augusto), the appellee, did not acquire any right over the subject lot since an heir merely steps into the shoes of the decedent and is merely the continuation of the personality of his predecessor-in-interest.
>
> Having thus declared that appellee acquired no right whatsoever over the property in question, it follows that the contract of sale he entered into with Camper was invalid and did not effectively transfer ownership over the property.[7] (underscoring supplied)

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[5] *Id.* at 226.

[6] Decision of November 27, 2006, penned by Associate Justice Ricardo R. Rosario with the concurrence of Associate Justices Romulo V. Borja and Mario V. Lopez, *rollo*, pp. 57-65.

[7] *Id.* at 62-63.

Thus the appellate court disposed:

WHEREFORE, the appealed Decision is hereby REVERSED and SET ASIDE, and judgment rendered:

1. Declaring null and void and of no effect, the Deed of Absolute Sale dated March 28, 1974, and TCT No. T- 43326;

2. Declaring null and void and of no effect, the Deed of Absolute Sale dated August 31, 1992 and TCT Nos. T-185959 and T-195213;

3. Ordering the Register of Deeds for Davao City to cancel TCT No. T-185959 in the name of Augusto P. Bajado and TCT No. T-195213 in the name of Camper Realty Corporation and to restore and/or reinstate TCT No. T-41086 of the Register of Deeds of Bataan (sic) to its full force and effect;

4. Ordering defendant Rodolfo Pajo to pay appellant the following sums:

   a. ₱50,000.00 as moral damages;
   b. ₱25,000.00 as attorney's fees; and
   c. ₱20,000.00 as exemplary damages.

5. Ordering defendant-appellee Augusto Bajado to return the amount of the purchase price and/or consideration of sale of the disputed land he sold to his co-defendant Camper Realty Corporation within ten (10) days from the finality of this decision with legal interest thereon from date of the sale;

6. Ordering Rodolfo Pajo to return to the heirs of Ligaya Bajado the amount of the purchase price of the sale of the subject land within ten (10) days from the finality of this decision with legal interest from date of the sale.[8]

It appears that petitioner's counsel of record, Atty. Raul C. Nengasca, died during the pendency of the appeal, notice of which the appellate court was given. Petitioner, who opted not to retain the services of a new counsel, claims not to have received a copy of the decision and that it was only informed

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[8] *Id.* at 63-64.

of it by Augusto's counsel, hence, its filing of a Motion for Reconsideration on March 8, 2007 of the appellate court's decision.

By Resolution of July 25, 2007, the Court of Appeals resolved to deny petitioner's motion for review for being filed out of time, it relying on the Postmaster's certification that a copy of its decision was actually received by petitioner on December 28, 2006.

Hence, the present petition for review on *certiorari*.

The records show that service *via* registered mail of the copy of the decision addressed to petitioner was made on December 28, 2006 on a certain Daisy Belleza (Daisy) who, petitioner avers, was not authorized to receive the copy, she being a mere househelper of petitioner's director Arturo F. Campo.

Although petitioner's principal office and Campo's residence are housed in the same building, Campo's househelper Daisy cannot be considered as a person-in-charge of petitioner's office to consider her receipt of copy of the decision on behalf of petitioner.[9] Neither can the household's receipt suffice as service to Campo, even if he is a member of petitioner's Board of Directors, absent a showing that he had been authorized by petitioner to accept service.

On to the merits of the petition.

In sales involving real property or any interest therein, a written authority in favor of the agent is necessary, otherwise the sale is void.[10] Since the property was subjected to ensuing transfers, it is necessary to establish the rights, if any, of the transferees *vis-à-vis* that of Nena's.

Respondent Augusto acquired the property as his share in his mother Ligaya's estate. As compulsory heir, he merely stepped into the shoes of Ligaya. Since Ligaya's title was derived from Rodolfo's sale to her on the basis of a forged SPA, Augusto's

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[9] *Vide* *Rubia v. Government Service Insurance System*, G.R. No. 151439, June 21, 2004, 432 SCRA 529.

[10] CIVIL CODE, Article 1874.

title must be cancelled. *Nemo dat quod non habet.* In fact, it appears that Augusto did not interpose an appeal from the appellate court's decision divesting him of his title, rendering it final and executory as to him.

The nullity of Augusto's title notwithstanding, the Court finds petitioner, who acquired the bigger portion of the property from Augusto, a purchaser in good faith. *Cayana v. Court of Appeals* reiterates a well-ensconced doctrine:

> . . . a person dealing with registered land has a right to rely on the Torrens certificate of title and to dispense with the need of inquiring further except when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or status of the title of the property in litigation. The presence of anything which excites or arouses suspicion should then prompt the vendee to look beyond the certificate and investigate the title of the vendor appearing on the face of said certificate. One who falls within the exception can neither be denominated an innocent purchaser for value nor a purchaser in good faith; and hence does not merit the protection of the law.[11]

A forged deed can legally be the root of a valid title when an innocent purchaser for value intervenes.[12] For a prospective buyer of a property registered under the Torrens system need not go beyond the title, especially when he has no notice of any badge of fraud or defect that would place him on guard.[13] His rights are thus entitled to full protection, for the law considers him an innocent purchaser.

There was no duty on petitioner's part to go beyond the face of Augusto's title and conduct inquiries on its veracity. Nena did not present proof of any circumstance that could serve as caveat for petitioner to undertake a searching investigation

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[11] G.R. No. 125607, March 18, 2004, 426 SCRA 10, 23, citing *Sandoval v. Court of Appeals*, 329 Phil. 48, 60-61, (1996).

[12] *Tenio-Obsequio v. Court of Appeals*, G.R. No. 107967, March 1, 1994, 230 SCRA 550

[13] *Rufloe v. Burgos*, G.R. No. 143573, January 30, 2009, 577 SCRA 264.

respecting the title. Moreover, the property was registered in Ligaya's name in 1974 yet, and Augusto's in 1986, and no encumbrance or lien was annotated either on Ligaya's or Augusto's title. For 18 years or in 1992, there was no controversy or dispute hounding the property to caution petitioner about Augusto's title thereto.

Contrary to Nena's assertion that the sale to petitioner was a mere subterfuge by Augusto to validate his claim on the property, evidence shows that it was not. Augusto presented a certified true copy of a Certificate Authorizing Registration issued by the Bureau of Internal Revenue on September 3, 1992[14] to show that capital gains tax had been duly paid on the transfer. The Court takes judicial notice that said certificate is necessary for presentation to the Register of Deeds to register the transfer.

AT ALL EVENTS, factual findings of the trial court are accorded great respect and shall not be disturbed on appeal, save for exceptional circumstances. It bears noting that despite the appellate court's reversal of the trial court's decision, it did not disturb the trial court's findings respecting petitioner's good faith.

In fine, the title in the name of Augusto is defeasible, he having acquired no better right from that of his predecessor-in-interest Ligaya. His title becomes conclusive and indefeasible, however, in the hands of petitioner, it being an innocent purchaser for value.

A word on the legal interest due on the reimbursement of the purchase price to Nena and her remaining co-owner Godofredo, Jr. In accordance with *Eastern Shipping Lines v. Court of Appeals*,[15] since the claim does not involve a loan or forbearance of money, imposition of interest rate of six percent (6%) per annum from date of filing of the complaint is in order.

WHEREFORE, the assailed Court of Appeals Decision in *CA-G.R. CV. 59600* is *SET ASIDE* and another is rendered as follows:

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[14] Folder of Exhibits, Exhibit 12, p. 276.

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

1) The Deed of Absolute Sale dated March 28, 1974 executed by respondent Rodolfo Pajo in favor of Ligaya *Vda. De* Bajado is declared *NULL* and *VOID*.

2) Transfer Certificate of Title No. 195213 in the name of petitioner, Camper Realty Corporation, is declared *VALID*. The Register of Deeds of Davao City is accordingly *ORDERED* to *RETAIN* in the Registry said Transfer Certificate of Title.

3) Respondent Rodolfo Pajo is *ORDERED* to pay respondent Maria Nena Pajo-Reyes the amounts of ₱50,000.00 as moral damages, ₱25,000.00 as attorney's fees, and ₱20,000.00 as exemplary damages; and

4) Respondent Augusto Bajado is *ORDERED* to return the purchase price paid by petitioner for the land covered by Transfer Certificate of Title No. 195213 to respondents Maria Nena Pajo-Reyes and Godofredo Pajo, Jr., the amount to bear legal interest of 6% per annum from the date of filing of the complaint.

The Register of Deeds of Davao City is *FURTHER ORDERED* to cancel Transfer Certificate of Title No. T-185959 in the name of respondent Augusto Bajado and to issue in its stead a title in the names of respondents Maria Nena Pajo-Reyes and Godofredo Pajo, Jr.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 180687. October 6, 2010]

ESMERALDO C. ROMULLO, PEDRO MANGUNDAYAO, MAXIMO ANES, ELVIRA BONZA, ROBERTO BELARMINO, TELESPORO GARCIA, BETH ZAIDA GIMENEZ, CELSO LIBRANDO, MICHAEL DELA CRUZ, and ROBERTO ARAWAG, *petitioners, vs.*

SAMAHANG MAGKAKAPITBAHAY NG BAYANIHAN COMPOUND HOMEOWNERS ASSOCIATION, INC., represented by its President, PAQUITO QUITALIG, *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; JURISDICTION DETERMINED BY THE ALLEGATIONS PLEADED IN THE COMPLAINT.— Settled is the rule that jurisdiction in ejectment cases is determined by the allegations pleaded in the complaint. It cannot be made to depend on the defenses set up in the answer or pleadings filed by the defendant. Neither can it be made to depend on the exclusive characterization of the case by one of the parties. The test for determining the sufficiency of those allegations is whether, admitting the facts alleged, the court can render a valid judgment in accordance with the prayer of the plaintiff.

2. ID.; ID.; ID.; WHO MAY INSTITUTE PROCEEDINGS AND WHEN.— An action for forcible entry or unlawful detainer is governed by Rule 70 of the Rules of Court, Section 1 of which provides: SECTION 1. *Who may institute proceedings, and when.* — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs. Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. An unlawful

detainer proceeding is summary in nature, jurisdiction of which lies with the proper municipal trial court or metropolitan trial court. The action must be brought within one year from the date of last demand; and the issue in said case is the right to physical possession.

3. ID.; ID.; ID.; SUFFICIENCY OF COMPLAINT.— We have held that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

4. ID.; ID.; MOTION TO DISMISS; GROUNDS; *LITIS PENDENTIA*; REQUISITES.— The requisites of *litis pendentia* are the following: (a) identity of parties, or at least such as representing the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

APPEARANCES OF COUNSEL

Glenda M. Mateo for petitioners.
Santos V. Catubay, Jr. for respondent.

D E C I S I O N

NACHURA,[*] *J.*:

Before this Court is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Civil Procedure, seeking the

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[*] In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 28, 2010.

[1] *Rollo*, pp. 3-11.

reversal of the Court of Appeals (CA) Decision[2] dated August 22, 2007.

Culled from the records, the facts, as narrated by the CA, are as follows:

> In its Complaint, respondent [Samahang Magkakapitbahay ng Bayanihan Compound Homeowners Association, Inc., represented by its President, Paquito Quitalig] alleged that since it was qualified to avail of the benefits under the Community Mortgage Program of the government, it secured a loan from the National Home Mortgage Finance Corporation Development Fund (NHMFCDF) for the purchase of a land known as Bayanihan Compound located in Santan Street, Parang, Marikina. Said land would thereafter be distributed to members/beneficiaries of the respondent under its housing program. After the sale was consummated, two Transfer Certificates of Title were issued in the name of the respondent and the land was distributed in portions to respondent's members/beneficiaries. However, despite demand, petitioners [Esmeraldo C. Romullo, Pedro Mangundayao, Maximo Anes, Elvira Bonza, Roberto Belarmino, Telesporo Garcia, Beth Zaida Gimenez, Celso Librando, Michael dela Cruz, and Roberto Arawag] refused to pay their monthly dues and legal fees as well as the deposits and amortizations for their respective lot allocations. Resultantly, respondent approved a Resolution expelling the petitioners as its members and disqualifying them as beneficiaries of the housing project and in another Resolution, also approved the substitution of petitioners by qualified members/beneficiaries in accordance with the Rules and Regulations Implementing the Community Mortgage Program.
>
> Despite notice of disqualification, petitioners continued to occupy the lots alloted to them and refused to execute a waiver of their lot allotments. The matter was referred to the *barangay* for conciliation but still no settlement was reached. Thus, final and formal demands were made by respondent on each of the petitioners to vacate and surrender peacefully [the] possession and control of their lots. Still, petitioners refused and failed to comply. Ultimately, respondent sought the eviction of the petitioners based on the provisions of the

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[2] Particularly docketed as CA-G.R. SP No. 96577, penned by Associate Justice Mariano C. del Castillo (now a member of this Court), with Associate Justices Arcangelita Romilla Lontok and Romeo F. Barza, concurring; *id.* at 15-25.

Implementing Corporate Circular of the NHMFCDF on Community Mortgage Program under RA [No.] 7279, specifically Sections 8.5.4 and 12.3.5 by filing an ejectment case against the petitioners praying that they vacate the premises and pay the sum of PhP3,000.00 as reasonable compensation until such time that they vacate the lots in question.

In their Answer with Compulsory Counterclaim, petitioners alleged that respondent neither informed them of the status of the housing project and its scheduled meetings, nor were they notified of respondent's registration with the Home Insurance Guaranty Corporation (HIGC), wherein some of them were excluded in the master list of members/beneficiaries. Petitioners further argued that the board resolutions expelling them as members and disqualifying them as beneficiaries of the respondent's housing project were null and void as the terms of office of the members of the Board of Directors who passed the said resolutions had already expired at the time the meeting was held. Moreover, they maintained that the case should have been suspended due to a prejudicial question brought about by the filing of another suit by some of them with the Housing and Land Use Regulatory Board (HLURB) entitled "*Esmeraldo C. Romul[l]o, et al. v. Paquito Quitalig, et al.*" As counterclaims, petitioners sought awards of moral and exemplary damages as well as litigation expenses.

In its Decision, the M[e]TC gave more weight to the arguments raised by the petitioners and the Complaint was dismissed without prejudice for alleged lack of jurisdiction in view of the pending case before the HLURB involving the same parties and issues. Petitioners' counterclaims were likewise dismissed for lack of merit. However, this judgment was reversed by the RTC on appeal. The dispositive portion of the RTC's Decision reads:

> "WHEREFORE, foregoing premises considered, the appealed Decision of the Metropolitan Trial Court of Marikina City, Branch 75 in Civil Case No. 04-7591 is hereby REVERSED. The plaintiff-appellant is hereby declared the lawful possessor of the premises in question and judgment is hereby rendered against the defendants-appellees, as follows:
>
> 1. Ordering the defendants-appellees and all persons claiming rights and interest under them to vacate the lots they are occupying located at Bayanihan Compound, Santan Street, Parang, Marikina City and surrender peaceful possession thereof unto the plaintiff-appellant;

2. Ordering the defendants-appellees to pay plaintiff-appellant the amount of ₱1,000.00 each per month as reasonable compensation for the use of the lots they occupy starting February 19, 2004, until such time that possession thereof is restored to the plaintiff-appellant;

3. Ordering the defendants-appellees to pay the amount of ₱20,000.00, as and by way of attorney's fees plus costs of the suit.

SO ORDERED."[3]

Aggrieved, petitioners went to the CA with a prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction, claiming that the Regional Trial Court (RTC) erred in not affirming the dismissal of the complaint by the Metropolitan Trial Court (MeTC) for lack of jurisdiction.

On August 22, 2007, the CA ruled in favor of respondent. The CA held that the complaint filed by respondent against petitioners contained assertions that clearly established a cause of action for unlawful detainer which was well within the jurisdiction of the MeTC. Undaunted, petitioners and their counsel filed two separate Motions for Reconsideration which the CA both denied in its Resolution[4]dated November 22, 2007 for lack of merit.

Hence, this petition. Petitioners assign the following as issues:

I. WHETHER OR NOT THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT THE LOWER COURT HAD JURISDICTION TO TRY THE INSTANT CASE; AND

II. WHETHER OR NOT THE HON. COURT OF APPEALS ERRED IN NOT SUSTAINING PETITIONERS' ARGUMENT THAT THE RULING OF THE RTC MUST BE SET ASIDE DUE TO THE PENDENCY OF A CASE BEFORE THE HLURB INVOLVING THE SAME PARTIES AND ISSUES.[5]

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[3] *Id.* at 16-19. (Citations omitted.)

[4] *Id.* at 13.

[5] *Id.* at 149-150.

At the outset, petitioners manifest that the Housing and Land Use Regulatory Board (HLURB) case is on appeal before the Office of the President (OP).[6] Petitioners asseverate that the CA arrogated unto itself, as the RTC did, the task of resolving the issue on the legality and propriety of petitioners' alleged disqualification as members/beneficiaries of respondent despite the fact that the determination of such issue is necessarily intertwined with the issue of whether or not a case of ejectment would prosper against petitioners. Petitioners opine that the CA is devoid of competence to decide on the following issues, namely: i) whether or not the corporate officers who passed the board resolution expelling/disqualifying petitioners from their membership with respondent acted within their authority; and (ii) whether or not the disqualification was valid and legal. It is petitioners' position that these issues could have been best resolved by the HLURB and/or the Home Insurance Guaranty Corporation, considering the administrative agencies' expertise on the matter and considering the pendency of petitioners' case against respondent before these bodies. Invoking the same ruling in *Quiambao v. Hon. Osorio*,[7] petitioners claim that the more prudent course in this case is to hold the ejectment proceedings in abeyance until after the determination of the administrative case because of the intimate correlation between the two proceedings, stemming from the fact that petitioners' ejectment from the property depends primarily on the resolution of the administrative case.[8]

On the other hand, respondent asserts that the complaint filed before the MeTC contains ample allegations for the latter to exercise jurisdiction over the case in accordance with the rules and prevailing jurisprudence. Respondent also claims that the issue involves questions of fact which were adequately passed upon by both the RTC and the CA when they made the finding that petitioners failed to perform their obligation under the Community Mortgage Program by refusing to pay their monthly

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[6] *Supra* note 1, at 5.

[7] 242 Phil. 441, 445 (1988).

[8] *Rollo*, pp. 145-154.

dues, deposits, and amortizations for their allotted portions over the community property. Respondent insists that the factual findings of both the RTC and the CA must not only be accorded respect but also finality. Moreover, respondent stands by the ruling of the RTC and the CA that there exist no issues of *litis pendentia* and prejudicial question in this case since the HLURB case and the ejectment proceedings do not involve the same issues nor pray for the same reliefs.[9] Finally, respondent manifests that the HLURB case filed by petitioners was already dismissed, which the OP affirmed on appeal.[10] Thus, any matter related thereto has become moot and academic. Respondent submits that this case is a simple ejectment case which is well within the MeTC's jurisdiction.

The petition is bereft of merit.

A party desiring to appeal by *certiorari* from a judgment, final order, or resolution of the CA, as in this case, may file before this Court a verified petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure within 15 days from notice of the judgment, final order, or resolution appealed from. Petitioners, instead of a petition for review on *certiorari* under Rule 45, filed with this Court the instant petition for *certiorari* under Rule 65, an improper remedy. By availing of a wrong or inappropriate mode of appeal, the petition merits outright dismissal.[11]

Even on the merits, the petition must fail.

Settled is the rule that jurisdiction in ejectment cases is determined by the allegations pleaded in the complaint. It cannot be made to depend on the defenses set up in the answer or pleadings filed by the defendant. Neither can it be made to depend on the exclusive characterization of the case by one of the parties. The test for determining the sufficiency of those

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[9] *Id.* at 171-182.

[10] *Id.* at 81.

[11] *Sea Power Shipping Enterprises, Inc. v. Court of Appeals*, 412 Phil. 603, 610-611 (2001).

allegations is whether, admitting the facts alleged, the court can render a valid judgment in accordance with the prayer of the plaintiff.[12]

An action for forcible entry or unlawful detainer is governed by Rule 70 of the Rules of Court, Section 1 of which provides:

SECTION 1. *Who may institute proceedings, and when.* — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. An unlawful detainer proceeding is summary in nature, jurisdiction of which lies with the proper municipal trial court or metropolitan trial court. The action must be brought within one year from the date of last demand; and the issue in said case is the right to physical possession.[13]

Based on the foregoing, we have held that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following:

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[12] *Larano v. Calendacion*, G.R. No. 158231, June 19, 2007, 525 SCRA 57, 65.

[13] *Canlas v. Tubil*, G.R. No. 184285, September 25, 2009, 601 SCRA 147, 156-157.

(1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;

(2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;

(3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

(4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[14]

In this case, respondent's allegations in the complaint clearly make a case for unlawful detainer, essential to confer jurisdiction on the MeTC over the subject matter. Thus, we accord respect to the CA's findings, to wit:

A review of the Complaint readily reveals that land titles were issued in the name of the respondent after it purchased the land referred to as the Bayanihan Compound through the Community Mortgage Program (CMP) of the National Home Mortgage Finance Corporation. The lots allocated to the petitioners formed part of the Bayanihan Compound which they received as members/ beneficiaries of the respondent. However, their refusal to pay the monthly amortizations despite demands resulted in their expulsion as members and loss of recognition as beneficiaries of the lots in question. Even when the case was referred to the *barangay*, no settlement was reached. Petitioners likewise did not conform to respondent's demand to vacate the premises and return its possession. As such, respondent sought to recover possession of the said lots by filing a case for ejectment within a year after final demand.[15]

Moreover, this Court rejects the contention of petitioners that the RTC and the CA erred in not dismissing the complaint of respondent on the ground of *litis pendentia*, in view of the pendency of the HLURB case.

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[14] *Cabrera v. Getaruela*, G.R. No. 164213, April 21, 2009, 586 SCRA 129, 136-137.

[15] *Supra* note 2, at 20.

The requisites of *litis pendentia* are the following: (a) identity of parties, or at least such as representing the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[16]

The causes of action and, logically, the issues in the two cases, are clearly different, each requiring divergent adjudication. In short, while there is identity of parties, there are different issues, causes of action, and reliefs prayed for between them. Contrary to petitioners' posture, not all the elements of *litis pendentia* are present.

Appropos is the CA's ruling:

> The suit filed with the HLURB involves: (1) the reinstatement of the petitioners as members of the respondent, which was their community association; (2) a call for regular annual meetings; (3) elections for board of directors; ([4]) an accounting of funds; and ([5]) the annulment of the board resolutions which expelled them as members and disqualified them to be beneficiaries of the housing program. On the other hand, the ejectment case has in issue the better right of the petitioners or of the respondent to the physical possession of the lots occupied by petitioners. Clearly, therefore, no identity of the rights asserted and the reliefs prayed for exist in both cases.[17]

In sum, we find no grave abuse of discretion, amounting to lack or excess of jurisdiction, on the part of the CA, which would warrant the reversal and/or modification of the assailed Decision.

WHEREFORE, the instant petition is *DISMISSED*, and the Court of Appeals Decision dated August 22, 2007 is *AFFIRMED*. No costs.

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[16] *Spouses Arquiza v. Court of Appeals*, 498 Phil. 793, 804 (2005).

[17] *Supra* note 2, at 22-23.

SO ORDERED.

Velasco, Jr.,[**] *Peralta, Mendoza,* and *Sereno,*[***] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 184823. October 6, 2010]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **AICHI FORGING COMPANY OF ASIA, INC.,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; SECTION 112 (A) THEREOF; UNUTILIZED INPUT VALUE ADDED TAX (VAT); TWO-YEAR PRESCRIPTIVE PERIOD FOR CLAIMING A REFUND/CREDIT OF UNUTILIZED INPUT VAT SHOULD BE RECKONED FROM THE CLOSE OF THE TAXABLE QUARTER WHEN THE SALES WAS MADE; SECTIONS 204 (C) AND 229 OF THE NIRC APPLY TO ERRONEOUS PAYMENT OR ILLEGAL COLLECTION OF INTERNAL REVENUE TAXES.— The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes." We explained that: [Section 112 (A) of the NIRC] clearly provides in no

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[**] Additional member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 897 dated September 28, 2010.

[***] Additional member in lieu of Associate Justice Roberto A. Abad per Special Order No. 903 dated September 28, 2010.

uncertain terms that **unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.** x x x [W]e find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; LEGAL PERIOD; MANNER OF COMPUTING LEGAL PERIODS UNDER THE ADMINISTRATIVE CODE OF 1987 PREVAILS OVER THAT PROVIDED UNDER THE CIVIL CODE; A YEAR IS COMPOSED OF 12 CALENDAR MONTHS, THE NUMBER OF DAYS BEING IRRELEVANT; ADMINISTRATIVE CLAIM IN CASE AT BAR WAS TIMELY FILED.— In *Commissioner of Internal Revenue v. Primetown Property Group, Inc*., we said that as between the Civil Code, which provides that a year is equivalent to 365 days, and the Administrative Code of 1987, which states that a year is composed of 12 calendar months, it is the latter that must prevail following the legal maxim, *Lex posteriori derogat priori*. Thus: Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter — the computation of legal periods. Under the Civil Code, a year is equivalent to 365 days whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months. Needless to state, under the Administrative Code of 1987, the number of days is irrelevant. There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. For this reason, we hold that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. *Lex posteriori derogat priori.* xxx Applying this to the present case, the two-year period to file a claim for tax refund/credit for the period July 1, 2002 to September 30, 2002 expired on

September 30, 2004. Hence, respondent's administrative claim was timely filed.

3. TAXATION; NATIONAL INTERNAL REVENUE CODE; SECTION 112 (D) THEREOF; REFUNDS OR TAX CREDITS OF INPUT VALUE ADDED TAX (VAT); JUDICIAL CLAIM FOR TAX REFUND/CREDIT, WHEN MAY BE FILED; FILING OF JUDICIAL CLAIM BEFORE THE COURT OF TAX APPEALS CONSIDERED PREMATURE WHERE THE TAXPAYER FAILED TO WAIT FOR THE DECISION OF THE COMMISSIONER OF INTERNAL REVENUE ON HIS APPLICATION FOR TAX REFUND/CREDIT OR THE LAPSE OF THE 120-DAY PERIOD.— [N]otwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC x x x. Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days. In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

4. ID.; ID.; ID.; ID.; ID.; TWO-YEAR PRESCRIPTIVE PERIOD APPLIES TO APPLICATIONS FOR REFUND/CREDIT FILED WITH THE COMMISSIONER OF INTERNAL REVENUE AND NOT TO JUDICIAL CLAIMS BEFORE THE COURT OF TAX APPEALS; NON-OBSERVANCE OF THE 120-DAY PERIOD IS FATAL TO THE FILING OF A JUDICIAL CLAIM BEFORE THE COURT OF TAX APPEALS.— Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis. There is nothing in Section 112 of the NIRC to support

respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)" within which to decide on the claim. In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

5. ID.; ID.; ID.; ID.; ID.; PREMATURE FILING OF JUDICIAL CLAIM FOR TAX REFUND/CREDIT OF INPUT VAT WARRANTS THE DISMISSAL THEREOF.— The premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Bernaldo Mirador & Directo Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

A taxpayer is entitled to a refund either by authority of a statute expressly granting such right, privilege, or incentive in

his favor, or under the principle of *solutio indebiti* requiring the return of taxes erroneously or illegally collected. In both cases, a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim.

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to set aside the July 30, 2008 Decision[1] and the October 6, 2008 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc*.

Factual Antecedents

Respondent Aichi Forging Company of Asia, Inc., a corporation duly organized and existing under the laws of the Republic of the Philippines, is engaged in the manufacturing, producing, and processing of steel and its by-products.[3] It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) entity[4] and its products, "close impression die steel forgings" and "tool and dies," are registered with the Board of Investments (BOI) as a pioneer status.[5]

On September 30, 2004, respondent filed a claim for refund/credit of input VAT for the period July 1, 2002 to September 30, 2002 in the total amount of ₱3,891,123.82 with the petitioner Commissioner of Internal Revenue (CIR), through the Department of Finance (DOF) One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center.[6]

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[1] *Rollo*, pp. 31-A-43; penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Olga Palanca-Enriquez.

[2] *Id.* at 44-45.

[3] *Id.* at 13.

[4] *Id.*

[5] *Id.*

[6] CTA Second Division *rollo*, pp. 26-27.

Proceedings before the Second Division of the CTA

On even date, respondent filed a Petition for Review[7] with the CTA for the refund/credit of the same input VAT. The case was docketed as CTA Case No. 7065 and was raffled to the Second Division of the CTA.

In the Petition for Review, respondent alleged that for the period July 1, 2002 to September 30, 2002, it generated and recorded zero-rated sales in the amount of ₱131,791,399.00,[8] which was paid pursuant to Section 106(A) (2) (a) (1), (2) and (3) of the National Internal Revenue Code of 1997 (NIRC);[9] that for the said period, it incurred and paid input VAT amounting

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[7] *Rollo*, pp. 79-90.

[8] *Id.* at 82.

[9] SEC. 106. Value-added Tax on Sale of Goods or Properties. —

(A) Rate and Base of Tax. — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

x x x x x x x x x

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. — The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

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to ₱3,912,088.14 from purchases and importation attributable to its zero-rated sales;[10] and that in its application for refund/credit filed with the DOF One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, it only claimed the amount of ₱3,891,123.82.[11]

In response, petitioner filed his Answer[12] raising the following special and affirmative defenses, to wit:

4. Petitioner's alleged claim for refund is subject to administrative investigation by the Bureau;
5. Petitioner must prove that it paid VAT input taxes for the period in question;
6. Petitioner must prove that its sales are export sales contemplated under Sections 106(A) (2) (a), and 108(B) (1) of the Tax Code of 1997;
7. Petitioner must prove that the claim was filed within the two (2) year period prescribed in Section 229 of the Tax Code;
8. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund; and
9. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.[13]

Trial ensued, after which, on January 4, 2008, the Second Division of the CTA rendered a Decision partially granting respondent's claim for refund/credit. Pertinent portions of the Decision read:

For a VAT registered entity whose sales are zero-rated, to validly claim a refund, Section 112 (A) of the NIRC of 1997, as amended, provides:

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[10] *Rollo*, p. 82.

[11] *Id.* at 82-83.

[12] *Id.* at 91-94.

[13] *Id.* at 92.

SEC. 112. Refunds or Tax Credits of Input Tax. —

(A) Zero-rated or Effectively Zero-rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x

Pursuant to the above provision, petitioner must comply with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

The Court finds that the first three requirements have been complied [with] by petitioner.

With regard to the first requisite, the evidence presented by petitioner, such as the Sales Invoices (Exhibits "II" to "II-262", "JJ" to "JJ-431", "KK" to "KK-394" and "LL") shows that it is engaged in sales which are zero-rated.

The second requisite has likewise been complied with. The Certificate of Registration with OCN 1RC0000148499 (Exhibit "C") with the BIR proves that petitioner is a registered VAT taxpayer.

In compliance with the third requisite, petitioner filed its administrative claim for refund on September 30, 2004 (Exhibit "N") and the present Petition for Review on September 30, 2004, both within the two (2) year prescriptive period from the close of the taxable quarter when the sales were made, which is from September 30, 2002.

As regards, the fourth requirement, the Court finds that there are some documents and claims of petitioner that are baseless and have not been satisfactorily substantiated.

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In sum, petitioner has sufficiently proved that it is entitled to a refund or issuance of a tax credit certificate representing unutilized excess input VAT payments for the period July 1, 2002 to September 30, 2002, which are attributable to its zero-rated sales for the same period, but in the reduced amount of ₱3,239,119.25, computed as follows:

Amount of Claimed Input VAT	₱	3,891,123.82
Less:		
Exceptions as found by the ICPA		41,020.37
Net Creditable Input VAT	₱	3,850,103.45
Less:		
Output VAT Due		610,984.20
Excess Creditable Input VAT	₱	3,239,119.25

WHEREFORE, premises considered, the present Petition for Review is PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner [in] the reduced amount of THREE MILLION TWO HUNDRED THIRTY NINE THOUSAND ONE HUNDRED NINETEEN AND 25/100 PESOS (₱3,239,119.25), representing the unutilized input VAT incurred for the months of July to September 2002.

SO ORDERED.[14]

Dissatisfied with the above-quoted Decision, petitioner filed a Motion for Partial Reconsideration,[15] insisting that the administrative and the judicial claims were filed beyond the two-year period to claim a tax refund/credit provided for under Sections 112(A) and 229 of the NIRC. He reasoned that since the year 2004 was a leap year, the filing of the claim for tax refund/credit on September 30, 2004 was beyond the two-year period, which expired on September 29, 2004.[16] He cited as basis Article 13 of the Civil Code,[17] which provides that when

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[14] *Id.* at 53-54 and 61-62.

[15] *Id.* at 95-104.

[16] *Id.* at 98.

[17] Art. 13. When the law speaks of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise.

the law speaks of a year, it is equivalent to 365 days. In addition, petitioner argued that the simultaneous filing of the administrative and the judicial claims contravenes Sections 112 and 229 of the NIRC.[18] According to the petitioner, a prior filing of an administrative claim is a "condition precedent"[19] before a judicial claim can be filed. He explained that the rationale of such requirement rests not only on the doctrine of exhaustion of administrative remedies but also on the fact that the CTA is an appellate body which exercises the power of judicial review over administrative actions of the BIR.[20]

The Second Division of the CTA, however, denied petitioner's Motion for Partial Reconsideration for lack of merit. Petitioner thus elevated the matter to the CTA *En Banc* via a Petition for Review.[21]

Ruling of the CTA En Banc

On July 30, 2008, the CTA *En Banc* affirmed the Second Division's Decision allowing the partial tax refund/credit in favor of respondent. However, as to the reckoning point for counting the two-year period, the CTA *En Banc* ruled:

> Petitioner argues that the administrative and judicial claims were filed beyond the period allowed by law and hence, the honorable Court has no jurisdiction over the same. In addition, petitioner further contends that respondent's filing of the administrative and judicial [claims] effectively eliminates the authority of the honorable Court to exercise jurisdiction over the judicial claim.
>
> We are not persuaded.

If months are designated by their name, they shall be computed by the number of days which they respectively have.

In computing a period, the first day shall be excluded, and the last day included.

[18] *Rollo,* pp. 98-99.

[19] *Id.* at 101.

[20] *Id.* at 100-101.

[21] *Id.* at 105-118.

Section 114 of the 1997 NIRC, and We quote, to wit:

> SEC. 114. Return and Payment of Value-added Tax. —
>
> (A) In General. — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.
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> [x x x x x x x x x]

Based on the above-stated provision, a taxpayer has twenty five (25) days from the close of each taxable quarter within which to file a quarterly return of the amount of his gross sales or receipts. In the case at bar, the taxable quarter involved was for the period of July 1, 2002 to September 30, 2002. Applying Section 114 of the 1997 NIRC, respondent has until October 25, 2002 within which to file its quarterly return for its gross sales or receipts [with] which it complied when it filed its VAT Quarterly Return on October 20, 2002.

In relation to this, the reckoning of the two-year period provided under Section 229 of the 1997 NIRC should start from the payment of tax subject claim for refund. As stated above, respondent filed its VAT Return for the taxable third quarter of 2002 on October 20, 2002. Thus, respondent's administrative and judicial claims for refund filed on September 30, 2004 were filed on time because AICHI has until October 20, 2004 within which to file its claim for refund.

In addition, We do not agree with the petitioner's contention that the 1997 NIRC requires the previous filing of an administrative claim for refund prior to the judicial claim. This should not be the case as the law does not prohibit the simultaneous filing of the administrative and judicial claims for refund. What is controlling is that both claims for refund must be filed within the two-year prescriptive period.

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed January 4, 2008 Decision and March 13, 2008 Resolution of the CTA Second Division. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby DENIED DUE COURSE and DISMISSED for lack of merit. Accordingly, the January 4, 2008 Decision and March 13, 2008 Resolution of the CTA Second Division in CTA Case No. 7065 entitled, "AICHI Forging Company of Asia, Inc. petitioner vs. Commissioner of Internal Revenue, respondent" are hereby AFFIRMED *in toto*.

SO ORDERED.[22]

Petitioner sought reconsideration but the CTA *En Banc* denied[23] his Motion for Reconsideration.

Issue

Hence, the present recourse where petitioner interposes the issue of whether respondent's judicial and administrative claims for tax refund/credit were filed within the two-year prescriptive period provided in Sections 112(A) and 229 of the NIRC.[24]

Petitioner's Arguments

Petitioner maintains that respondent's administrative and judicial claims for tax refund/credit were filed in violation of Sections 112(A) and 229 of the NIRC.[25] He posits that pursuant to Article 13 of the Civil Code,[26] since the year 2004 was a leap year, the filing of the claim for tax refund/credit on September 30, 2004 was beyond the two-year period, which expired on September 29, 2004.[27]

Petitioner further argues that the CTA *En Banc* erred in applying Section 114(A) of the NIRC in determining the start of the two-year period as the said provision pertains to the compliance requirements in the payment of VAT.[28] He asserts

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[22] *Id.* at 41-43.

[23] *Id.* at 44-45.

[24] *Id.* at 19.

[25] *Id.*

[26] *Supra* note 17.

[27] *Rollo*, p. 21.

[28] *Id.* at 22.

that it is Section 112, paragraph (A), of the same Code that should apply because it specifically provides for the period within which a claim for tax refund/ credit should be made.[29]

Petitioner likewise puts in issue the fact that the administrative claim with the BIR and the judicial claim with the CTA were filed on the same day.[30] He opines that the simultaneous filing of the administrative and the judicial claims contravenes Section 229 of the NIRC, which requires the prior filing of an administrative claim.[31] He insists that such procedural requirement is based on the doctrine of exhaustion of administrative remedies and the fact that the CTA is an appellate body exercising judicial review over administrative actions of the CIR.[32]

Respondent's Arguments

For its part, respondent claims that it is entitled to a refund/ credit of its unutilized input VAT for the period July 1, 2002 to September 30, 2002 as a matter of right because it has substantially complied with all the requirements provided by law.[33] Respondent likewise defends the CTA *En Banc* in applying Section 114(A) of the NIRC in computing the prescriptive period for the claim for tax refund/credit. Respondent believes that Section 112(A) of the NIRC must be read together with Section 114(A) of the same Code.[34]

As to the alleged simultaneous filing of its administrative and judicial claims, respondent contends that it first filed an administrative claim with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the DOF before it filed a judicial claim with the CTA.[35] To prove this, respondent points

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[29] *Id*.

[30] *Id*. at 24.

[31] *Id*.

[32] *Id*. at 25.

[33] *Id*. at 161-162.

[34] *Id*. at 164.

[35] *Id*. at 166.

out that its Claimant Information Sheet No. 49702[36] and BIR Form No. 1914 for the third quarter of 2002,[37] which were filed with the DOF, were attached as Annexes "M" and "N," respectively, to the Petition for Review filed with the CTA.[38] Respondent further contends that the non-observance of the 120-day period given to the CIR to act on the claim for tax refund/credit in Section 112(D) is not fatal because what is important is that both claims are filed within the two-year prescriptive period.[39] In support thereof, respondent cites *Commissioner of Internal Revenue v. Victorias Milling Co., Inc.*[40] where it was ruled that "[i]f, however, the [CIR] takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the [CTA] before the end of the two-year period without awaiting the decision of the [CIR]."[41] Lastly, respondent argues that even if the period had already lapsed, it may be suspended for reasons of equity considering that it is not a jurisdictional requirement.[42]

Our Ruling

The petition has merit.

Unutilized input VAT must be claimed within two years after the close of the taxable quarter when the sales were made

In computing the two-year prescriptive period for claiming a refund/credit of unutilized input VAT, the Second Division of the CTA applied Section 112(A) of the NIRC, which states:

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[36] CTA Second Division *rollo*, p. 26.

[37] *Id.* at 27.

[38] *Rollo*, p. 166.

[39] *Id.* at 166.

[40] 130 Phil. 12 (1968).

[41] *Id.* at 16.

[42] *Rollo*, p. 167.

SEC. 112. Refunds or Tax Credits of Input Tax. —

(A) Zero-rated or Effectively Zero-rated Sales — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made,** apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. (Emphasis supplied.)

The CTA *En Banc*, on the other hand, took into consideration Sections 114 and 229 of the NIRC, which read:

SEC. 114. Return and Payment of Value-Added Tax. —

(A) In General. — Every person liable to pay the value-added tax imposed under this Title shall **file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.

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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 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.)

Hence, the CTA *En Banc* ruled that the reckoning of the two-year period for filing a claim for refund/credit of unutilized input VAT should start from the date of payment of tax and not from the close of the taxable quarter when the sales were made.[43]

The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,[44] where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes."[45] We explained that:

The above proviso [Section 112 (A) of the NIRC] clearly provides in no uncertain terms that **unutilized input VAT payments not**

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[43] *Id*.

[44] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

[45] *Id.* at 173.

otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112 (A), "[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued." Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.

Reckoning for prescriptive period under Secs. 204(C) and 229 of the NIRC inapplicable

To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:

> Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. — The Commissioner may —
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> x x x x x x x x x
>
> (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.

x x x x x x x x x

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, of any sum alleged to have been excessively or in any manner wrongfully 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.

Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, **both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.**

MPC's creditable input VAT not erroneously paid

For perspective, under Sec. 105 of the NIRC, creditable input VAT is an indirect tax which can be shifted or passed on to the buyer, transferee, or lessee of the goods, properties, or services of the taxpayer. The fact that the subsequent sale or transaction involves a wholly-tax exempt client, resulting in a zero-rated or effectively zero-rated transaction, does not, standing alone, deprive the taxpayer

of its right to a refund for any unutilized creditable input VAT, albeit the erroneous, illegal, or wrongful payment angle does not enter the equation.

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Considering the foregoing discussion, **it is clear that Sec. 112 (A) of the NIRC, providing a two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales or transactions were made pertaining to the creditable input VAT, applies to the instant case, and not to the other actions which refer to erroneous payment of taxes.**[46] (Emphasis supplied.)

In view of the foregoing, we find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.

The administrative claim was timely filed

Bearing this in mind, we shall now proceed to determine whether the administrative claim was timely filed.

Relying on Article 13 of the Civil Code,[47] which provides that a year is equivalent to 365 days, and taking into account the fact that the year 2004 was a leap year, petitioner submits that the two-year period to file a claim for tax refund/credit for the period July 1, 2002 to September 30, 2002 expired on September 29, 2004.[48]

We do not agree.

In *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*,[49] we said that as between the Civil Code, which

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[46] *Id.* at 171-175.

[47] *Supra* note 17.

[48] *Rollo,* p. 21.

[49] G.R. No. 162155, August 28, 2007, 531 SCRA 436.

provides that a year is equivalent to 365 days, and the Administrative Code of 1987, which states that a year is composed of 12 calendar months, it is the latter that must prevail following the legal maxim, *Lex posteriori derogat priori*.[50] Thus:

> Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter — the computation of legal periods. Under the Civil Code, a year is equivalent to 365 days whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months. Needless to state, under the Administrative Code of 1987, the number of days is irrelevant.
>
> There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. For this reason, we hold that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. *Lex posteriori derogat priori.*

Applying Section 31, Chapter VIII, Book I of the Administrative Code of 1987 to this case, the two-year prescriptive period (reckoned from the time respondent filed its final adjusted return on April 14, 1998) consisted of 24 calendar months, computed as follows:

Year 1	1st calendar month	April 15, 1998 to May 14, 1998
	2nd calendar month	May 15, 1998 to June 14, 1998
	3rd calendar month	June 15, 1998 to July 14, 1998
	4th calendar month	July 15, 1998 to August 14, 1998
	5th calendar month	August 15, 1998 to September 14, 1998
	6th calendar month	September 15, 1998 to October 14, 1998
	7th calendar month	October 15, 1998 to November 14, 1998
	8th calendar month	November 15, 1998 to December 14, 1998
	9th calendar month	December 15, 1998 to January 14, 1999
	10th calendar month	January 15, 1999 to February 14, 1999
	11th calendar month	February 15, 1999 to March 14, 1999
	12th calendar month	March 15, 1999 to April 14, 1999
Year 2	13th calendar month	April 15, 1999 to May 14, 1999
	14th calendar month	May 15, 1999 to June 14, 1999
	15th calendar month	June 15, 1999 to July 14, 1999
	16th calendar month	July 15, 1999 to August 14, 1999
	17th calendar month	August 15, 1999 to September 14, 1999
	18th calendar month	September 15, 1999 to October 14, 1999

[50] *Id.* at 444.

19th calendar month	October 15, 1999 to November 14, 1999
20th calendar month	November 15, 1999 to December 14, 1999
21st calendar month	December 15, 1999 to January 14, 2000
22nd calendar month	January 15, 2000 to February 14, 2000
23rd calendar month	February 15, 2000 to March 14, 2000
24th calendar month	March 15, 2000 to April 14, 2000

We therefore hold that respondent's petition (filed on April 14, 2000) was filed on the last day of the 24th calendar month from the day respondent filed its final adjusted return. Hence, it was filed within the reglementary period.[51]

Applying this to the present case, the two-year period to file a claim for tax refund/credit for the period July 1, 2002 to September 30, 2002 expired on September 30, 2004. Hence, respondent's administrative claim was timely filed.

The filing of the judicial claim was premature

However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:

SEC. 112. Refunds or Tax Credits of Input Tax. —

x x x x x x x x x

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.**

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.** (Emphasis supplied.)

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[51] *Id.* at 444-445.

Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period[52] has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)" within which to decide on the claim.

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[52] *Rollo*, p. 166.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc*.[53] relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.

In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.

WHEREFORE, the Petition is hereby *GRANTED*. The assailed July 30, 2008 Decision and the October 6, 2008 Resolution of the Court of Tax Appeals are hereby *REVERSED* and *SET ASIDE*. The Court of Tax Appeals Second Division is DIRECTED to dismiss CTA Case No. 7065 for having been prematurely filed.

SO ORDERED.

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

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[53] *Supra* note 40.

SECOND DIVISION

[G.R. No. 185020. October 6, 2010]

FILOMENA R. BENEDICTO, *petitioner, vs.* **ANTONIO VILLAFLORES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; QUESTION OF WHETHER A POSSESSOR IS IN GOOD OR BAD FAITH IS A FACTUAL MATTER.— The question of whether a possessor is in good or bad faith is a factual matter. As a rule, a party may raise only questions of law in an appeal by *certiorari* under Rule 45 of the Rules of Court. The Supreme Court is not duty bound to analyze and weigh again the evidence considered in the proceedings below. This Court is not a trier of facts and does not embark on a reexamination of the evidence introduced by the parties during trial. This rule assumes greater force in the instant case where the CA affirmed the factual findings of the trial court.

2. CIVIL LAW; PROPERTY; RIGHT OF A BUILDER IN GOOD FAITH.— It is not disputed that the construction of Antonio's house was undertaken long before the sale in favor of Filomena; that when Filomena bought the property from Maria, Antonio's house which he used as residence had already been erected on the property. xxx Thus, we sustain the finding that Antonio is a builder in good faith. Under Article 448, a landowner is given the option to either appropriate the improvement as his own upon payment of the proper amount of indemnity, or sell the land to the possessor in good faith. Relatedly, Article 546 provides that a builder in good faith is entitled to full reimbursement for all the necessary and useful expenses incurred; it also gives him right of retention until full reimbursement is made.

3. ID.; ID.; ID.; RATIONALE; REMAND OF THE CASE TO THE REGIONAL TRIAL COURT, PROPER.— The RTC found good faith on the part of Antonio. Yet, it did not order the reimbursement of the necessary and useful expenses he

incurred. The pronouncement of this Court in *Pecson v. CA*, which was reiterated in *Tuatis v. Escol*, is instructive, *viz.*: The objective of Article 546 of the Civil Code is to administer justice between the parties involved. In this regard, this Court had long ago stated in *Rivera vs. Roman Catholic Archbishop of Manila* [40 Phil. 717 (1920)] that the said provision was formulated in trying to adjust the rights of the owner and possessor in good faith of a piece of land, to administer complete justice to both of them in such a way as neither one nor the other may enrich himself of that which does not belong to him. Guided by this precept, it is therefore the current market value of the improvements which should be made the basis of reimbursement**.** A contrary ruling would unjustly enrich the private respondents who would otherwise be allowed to acquire a highly valued income-yielding four-unit apartment building for a measly amount. Consequently, the parties should therefore be allowed to adduce evidence on the present market value of the apartment building upon which the trial court should base its finding as to the amount of reimbursement to be paid by the landowner. Thus, the CA correctly ordered the remand of the case to the RTC for further proceedings.

4. REMEDIAL LAW; APPEALS; ISSUES; MAY BE RESOLVED BY THE COURT, EVEN IF NOT RAISED BY THE PARTIES, WHEN IT IS ESSENTIAL AND INDISPENSABLE FOR THE JUST RESOLUTION OF THE CASE.— Indeed, the issue of Antonio's right to reimbursement and retention was not specifically raised during the pre-trial because Antonio insisted on his claim of ownership. However, Filomena is now estopped from questioning the CA for ruling on this issue because she was the one who raised it in her appeal before the CA. More importantly, the CA had to rule on the issue because it is essential and indispensable for the just resolution of the case. In *Villaflores v. RAM System Services, Inc.*, we had occasion to state that issues or errors not raised by the parties may be resolved by this Court when it is necessary to arrive at a just decision, and the resolution of the issues raised by the parties depend upon the determination of the unassigned issue or error, or is necessary to give justice to the parties.

5. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF, WHEN JUSTIFIED; DENIAL OF THE CLAIM FOR ATTORNEY'S FEES AND LITIGATION EXPENSES,

SUSTAINED.— It is settled that the award of attorney's fees is the exception rather than the general rule; counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of the Civil Code. As such, it is necessary for the court to make findings of fact and law that would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable. Certainly, Filomena was compelled to file this suit to vindicate her rights. However, by itself, it will not justify an award of attorney's fees. x x x Thus, we sustain the denial by the RTC and the CA of Filomena's claim for attorney's fees and litigation expenses.

APPEARANCES OF COUNSEL

Wilfred D. Asis for petitioner.
Vicente C. Angeles for respondent.

R E S O L U T I O N

NACHURA,[*] *J.*:

Petitioner Filomena R. Benedicto (Filomena) appeals by *certiorari* the September 30, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 80103, which affirmed with

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[*] In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 28, 2010.

[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Mariano C. del Castillo (now a member of this Court) and Romeo F. Barza, concurring; *rollo*, pp. 45-56.

modification the decision[2] dated December 10, 2002 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 19, in Civil Case No. 674-M-2000.

The antecedents.

Maria Villaflores (Maria) was the owner of Lot 2-A, with an area of 277 square meters, in Poblacion, Meycauayan, Bulacan, covered by Transfer Certificate of Title (TCT) No. T-84.761 (M). In 1980, Maria sold a portion of Lot 2-A to her nephew, respondent Antonio Villaflores (Antonio). Antonio then took possession of the portion sold to him and constructed a house thereon. Twelve (12) years later, or on August 15, 1992, Maria executed in favor of Antonio a *Kasulatan ng Bilihang Tuluyan*[3] covering the entire Lot 2-A. However, Antonio did not register the sale or pay the real property taxes for the subject land.

On August 31, 1994, Maria sold the same Lot 2-A to Filomena, evidenced by a *Kasulatan ng Bilihang Tuluyan*.[4] Filomena registered the sale with the Registry of Deeds of Meycauayan on September 6, 1994. Consequently, TCT No. T-84.761 (M) in the name of Maria was cancelled and TCT No. T-208265 (M) was issued in the name of Filomena. Since then Filomena paid the real property taxes for the subject parcel of land.

On September 28, 2000, Filomena filed a case for *Accion Publiciana with Cancellation of Notice of Adverse Claim, Damages and Attorney's Fees*[5] against Antonio. She alleged that she acquired Lot 2-A in 1994 from her grandaunt Maria by virtue of the *Kasulatan ng Bilihang Tuluyan*. At the time of the sale, she was not aware that Antonio had any claim or interest over the subject property. Antonio assured her that there was no impediment to her acquisition of the land, and promised to vacate the property five (5) years after the sale.

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[2] Records, pp. 571-580.

[3] *Id.* at 552-553.

[4] *Id.* at 17.

[5] *Id.* at 3-14.

In August 1999, Antonio requested an extension of one (1) year, and offered to pay a monthly rental of ₱2,000.00, which she granted. However, in 2000, Antonio refused to vacate the property and, instead, claimed absolute ownership of Lot 2-A.

Antonio traversed the complaint, asserting absolute ownership over Lot 2-A. He alleged that he purchased the subject property from Maria in 1980; and that he took possession of the same and constructed his house thereon. He came to know of the sale in favor of Filomena only in 2000 when the latter demanded that he vacate the property. He averred that Filomena was aware of the sale; hence, the subsequent sale in favor of Filomena was rescissible, fraudulent, fictitious, or simulated.[6]

After trial, the RTC rendered a decision[7] sustaining Filomena's ownership. According to the RTC, Filomena was the one who registered the sale in good faith; as such, she has better right than Antonio. It rejected Antonio's allegation of bad faith on the part of Filomena because no sufficient evidence was adduced to prove it. Likewise, the RTC found Antonio's evidence of ownership questionable. Nevertheless, it declared Antonio a builder in good faith.

The RTC disposed, thus:

WHEREFORE, judgment is hereby rendered as follows:

a) [Filomena] is adjudged the absolute and real owner of the property-in-question and covered by TCT No. T-208265 (M) registered in her name;

b) ordering [Antonio] and all persons claiming right under her to vacate the premises;

c) [Antonio] is declared to be a builder in good faith of his improvement/building erected in TCT No. T-208268 (M) and the provisions of Art. 448 of the New Civil Code applies;

d) all other claims of [Filomena] and counterclaim of [Antonio] are dismissed for lack of legal as well as factual basis.

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[6] *Id.* at 53-60.

[7] *Supra* note 2.

SO ORDERED.[8]

Both parties moved for reconsideration of the decision, but the RTC denied the motions for lack of merit.

Filomena and Antonio then filed their separate appeals with the CA. Filomena assailed the RTC pronouncement that Antonio was a builder in good faith, and the denial of her claim for damages. Antonio, on the other hand, faulted the RTC for sustaining Filomena's ownership of the subject lot.

On September 30, 2008, the CA rendered the now challenged Decision[9] affirming with modification the RTC decision. The CA affirmed the RTC for upholding Filomena's ownership of Lot 2-A and for declaring Antonio a builder in good faith. However, it remanded the case to the RTC for further proceedings to determine the respective rights of the parties under Articles 448 and 546 of the Civil Code, and the amount due Antonio.

The dispositive portion of the CA Decision reads:

WHEREFORE, in view of the foregoing, the appeal of [respondent] Antonio Villaflores is **GRANTED** in part. The Decision dated December 10, 2002 issued by Branch 19, Regional Trial Court, Malolos, Bulacan in Civil Case No. 674-M-2000 is **AFFIRMED** with **MODIFICATION** that Antonio Villaflores, being a builder in good faith, is entitled to reimbursement of the necessary and useful expense with the right of retention until reimbursement of said expenses in full. The partial appeal of [petitioner] Filomena Benedicto is **DENIED**.

In accordance with the foregoing disquisitions, let the case be **REMANDED** to the trial court which is **DIRECTED** to receive evidence, with dispatch, to determine the amount due [respondent], the rights of the parties under Arts. 448 and 546; and to render a complete judgment of the case.

SO ORDERED.[10]

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[8] *Id.* at 579-580.

[9] *Supra* note 1.

[10] *Id.* at 55.

Before us, Filomena faults the CA for holding that Antonio was a builder in good faith and was entitled to reimbursement for the necessary and useful expenses incurred, with right of retention until reimbursement of the said expenses in full. Filomena asserts that Antonio is not entitled to any reimbursement because he possessed the property by mere tolerance. Maria merely allowed Antonio to construct his house on a portion of Lot 2-A; hence, he is not entitled to any reimbursement or retention.

The appeal lacks merit.

The question of whether a possessor is in good or bad faith is a factual matter. As a rule, a party may raise only questions of law in an appeal by *certiorari* under Rule 45 of the Rules of Court.[11] The Supreme Court is not duty bound to analyze and weigh again the evidence considered in the proceedings below. This Court is not a trier of facts and does not embark on a reexamination of the evidence introduced by the parties during trial.[12] This rule assumes greater force in the instant case where the CA affirmed the factual findings of the trial court.

It is not disputed that the construction of Antonio's house was undertaken long before the sale in favor of Filomena; that when Filomena bought the property from Maria, Antonio's house which he used as residence had already been erected on the property. As explained by the CA:

> [Antonio] claims not being aware of any flaw in his title. He believed being the owner of the subject premises on account of the Deed of Sale thereof in his favor despite his inability to register the same. The improvement was, in fact, introduced by Antonio prior to Filomena's purchase of the land. x x x.[13]

Thus, we sustain the finding that Antonio is a builder in good faith.

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[11] *De Guia v. Court of Appeals*, 459 Phil. 447, 467 (2003).

[12] *Rodrigo v. Ancilla*, G.R. No. 139897, June 26, 2006, 492 SCRA 514, 521.

[13] *Supra* note 1, at 53-54.

Under Article 448, a landowner is given the option to either appropriate the improvement as his own upon payment of the proper amount of indemnity, or sell the land to the possessor in good faith. Relatedly, Article 546 provides that a builder in good faith is entitled to full reimbursement for all the necessary and useful expenses incurred; it also gives him right of retention until full reimbursement is made.[14]

The RTC found good faith on the part of Antonio. Yet, it did not order the reimbursement of the necessary and useful expenses he incurred.

The pronouncement of this Court in *Pecson v. CA*,[15] which was reiterated in *Tuatis v. Escol*,[16] is instructive, *viz.*:

> The objective of Article 546 of the Civil Code is to administer justice between the parties involved. In this regard, this Court had long ago stated in *Rivera vs. Roman Catholic Archbishop of Manila* [40 Phil. 717 (1920)] that the said provision was formulated in trying to adjust the rights of the owner and possessor in good faith of a piece of land, to administer complete justice to both of them in such a way as neither one nor the other may enrich himself of that which does not belong to him. Guided by this precept, it is therefore the current market value of the improvements which should be made the basis of reimbursement**.** A contrary ruling would unjustly enrich the private respondents who would otherwise be allowed to acquire a highly valued income-yielding four-unit apartment building for a measly amount. Consequently, the parties should therefore be allowed to adduce evidence on the present market value of the apartment building upon which the trial court should base its finding as to the amount of reimbursement to be paid by the landowner.

Thus, the CA correctly ordered the remand of the case to the RTC for further proceedings.

Filomena then argues that the CA overstepped its bounds when it ruled on Antonio's right to reimbursement and retention.

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[14] *Spouses Nuguid v. Court of Appeals*, 492 Phil. 343, 352 (2005).

[15] 314 Phil. 313, 324-325 (1995).

[16] G.R. No. 175399, October 27, 2009, 604 SCRA 471, 492-493.

She asserts that this issue was not raised in the proceedings *a quo*.

Indeed, the issue of Antonio's right to reimbursement and retention was not specifically raised during the pre-trial because Antonio insisted on his claim of ownership. However, Filomena is now estopped from questioning the CA for ruling on this issue because she was the one who raised it in her appeal before the CA.

More importantly, the CA had to rule on the issue because it is essential and indispensable for the just resolution of the case. In *Villaflores v. RAM System Services, Inc.*,[17] we had occasion to state that issues or errors not raised by the parties may be resolved by this Court when it is necessary to arrive at a just decision, and the resolution of the issues raised by the parties depend upon the determination of the unassigned issue or error, or is necessary to give justice to the parties.

Finally Filomena faults the RTC and the CA for denying her claim for attorney's fees. She asserts that there is overwhelming proof on record to support her claim, and insists on entitlement to attorney's fees and litigation expenses amounting to ₱440,700.00

We disagree.

It is settled that the award of attorney's fees is the exception rather than the general rule; counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of

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[17] G.R. No. 166136, August 18, 2006, 499 SCRA 353, 365.

the Civil Code. As such, it is necessary for the court to make findings of fact and law that would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable.[18]

Certainly, Filomena was compelled to file this suit to vindicate her rights. However, by itself, it will not justify an award of attorney's fees. In *Mindex Resources Development v. Morillo*,[19] this Court, in denying a claim for attorney's fees, held:

> We find the award of attorney's fees to be improper. The reason which the RTC gave — because petitioner had compelled respondent to file an action against it — falls short of our requirement in *Scott Consultants and Resource Development v. CA* from which we quote:
>
> > "It is settled that the award of attorney's fees is the exception rather than the rule and counsel's fees are not to be awarded every time a party wins suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification; its basis cannot be left to speculation or conjecture. Where granted, the court must explicitly state in the body of the decision, and not only in the dispositive portion thereof, the legal reason for the award of attorney's fees."
>
> Moreover, a recent case ruled that "in the absence of stipulation, a winning party may be awarded attorney's fees only in case plaintiff's action or defendant's stand is so untenable as to amount to gross and evident bad faith."
>
> Indeed, respondent was compelled to file this suit to vindicate his rights. However, such fact by itself will not justify an award of attorney's fees, when there is no sufficient showing of petitioner's bad faith in refusing to pay the said rentals as well as the repair and overhaul costs.

Thus, we sustain the denial by the RTC and the CA of Filomena's claim for attorney's fees and litigation expenses.

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[18] *Padillo v. Court of Appeals*, 422 Phil. 334, 356-357 (2001).

[19] 428 Phil. 934, 948-949 (2002). (Citations omitted.)

In fine, we find no reversible error committed by the CA in the challenged Decision.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 80103 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Velasco, Jr.,[**] *Peralta, Mendoza,* and *Sereno,* [***] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 186652. October 6, 2010]

ATTY. ALICE ODCHIGUE-BONDOC, *petitioner, vs.* **TAN TIONG BIO A.K.A. HENRY TAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; NATURE OF, EXPLAINED.— A preliminary investigation is not a quasi-judicial proceeding since "the prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused." x x x [A prosecutor] does not exercise adjudication nor rule-making functions. **Preliminary investigation is merely inquisitorial,** and is often the only means of discovering the persons who may be reasonably charged [of] a crime and to enable the [prosecutor] to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose

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[**] Additional member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 897 dated September 28, 2010.

[***] Additional member in lieu of Associate Justice Roberto A. Abad per Special Order No. 903 dated September 28, 2010.

except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. **While the [prosecutor] makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the [prosecutor].** A preliminary investigation thus partakes of an *investigative* or *inquisitorial power* for the sole purpose of obtaining information on what future action of a judicial nature may be taken.

2. REMEDIAL LAW; JUDGMENT; CONSTITUTIONAL REQUIREMENT THAT THE DECISION MUST STATE THE LEGAL BASIS THEREFOR DOES NOT EXTEND TO RESOLUTIONS ISSUED BY THE DEPARTMENT OF JUSTICE; REASON.— *Balangauan v. Court of Appeals* in fact iterates that even the action of the Secretary of Justice in reviewing a prosecutor's order or resolution via appeal or petition for review cannot be considered a quasi-judicial proceeding since the "DOJ is not a quasi-judicial body." Section 14, Article VIII of the Constitution does not thus extend to resolutions issued by the DOJ Secretary. Respondent posits, however, that *Balangauan* finds no application in the present case for, as the Supreme Court stated, the DOJ "rectified the shortness of its first resolution by issuing a lengthier one when it resolved [the therein] respondent['s] . . . motion for reconsideration." Respondent's position fails. Whether the DOJ in *Balangauan* issued an extended resolution in resolving the therein respondent's motion for reconsideration is immaterial. The extended resolution did not detract from settling that the DOJ is not a quasi-judicial body.

3. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT AGENCY; DEPARTMENT OF JUSTICE (DOJ); NATIONAL PROSECUTION SERVICE (NPS) RULE ON APPEAL; REVIEW POWER OF THE SECRETARY OF THE DEPARTMENT OF JUSTICE, EXPLAINED.— Respecting the action of the Secretary of Justice on respondent's petition for review under Section 12 of the NPS Rule on Appeal, respondent posits that "outright" dismissal is not sanctioned thereunder but under Section 7. Respondent's position similarly fails. That the DOJ Secretary used the word "outright" in dismissing respondent's petition for review under Section 12 of the Rule which reads: SEC. 12. Disposition of the appeal.—

> The Secretary may reverse, affirm or modify the appealed resolution. He may, ***motu proprio*** or upon motion, dismiss the petition for review on any of the following grounds: x x x (a) That there is no showing of any reversible error; x x x does not dent his action. To be sure, the word "outright" was merely used in conjunction with the *motu proprio* action. Section 7 has an altogether different set of grounds for the outright dismissal of a petition for review. These are (a) when the petition is patently without merit; (b) when the petition is manifestly intended for delay; (c) when the issues raised therein are too unsubstantial to require consideration; and (d) when the accused has already been arraigned in court. When the Secretary of Justice is convinced that a petition for review does not suffer any of the infirmities laid down in Section 7, it can decide what action to take (*i.e.*, reverse, modify, affirm or dismiss the appeal altogether), conformably with Section 12. In other words, Sections 7 and 12 are part of a two-step approach in the DOJ Secretary's review power.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioner.
Reyes & Santos Law Offices for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Tan Tiong Bio (respondent) had fully paid the installment payments of a 683-square-meter lot in the Manila Southwoods Residential Estates, a project of Fil-Estate Golf & Development, Inc. (Fil-Estate) in Carmona, Cavite, but Fil-Estate failed to deliver to him the title covering the lot, despite repeated demands. Fil-Estate also failed to heed the demand for the refund of the purchase price.[1]

Respondent, later learning that the lot "sold" to him was inexistent,[2] filed a complaint for Estafa against Fil-Estate officials

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[1] *Rollo*, pp. 12-13.

[2] CA *rollo*, pp. 102-109.

including its Corporate Secretary Atty. Alice Odchigue-Bondoc (petitioner) and other employees.[3]

In her Counter-Affidavit, petitioner alleged that, *inter alia*,

x x x x x x x x x

5. I had no participation at all in the acts or transactions alleged in the Complaint-Affidavit. As a Corporate Secretary, I have never been involved in the management and day-to-day operations of [Fil-Estate]. x x x

x x x x x x x x x.

7. x x x. [Herein respondent] alleges:

"**The letter showed that the request was approved by [herein petitioner]**, provided that the transfer fee was paid, and that there be payment of full downpayment, with the balance payable in two years."

8) The handwritten approval and endorsement, however, are not mine. **I have never transacted, either directly or indirectly, with** Mrs. Ona or **[herein respondent]**. x x x[4] (emphasis partly in the original, partly supplied; underscoring supplied)

On the basis of petitioner's above-quoted allegations in her Counter-Affidavit, respondent filed a complaint for Perjury against petitioner, docketed as I.S. No. PSG 03-07-11855 before the Pasig City Prosecutor's Office, which dismissed it by Resolution of June 17, 2004[5] for insufficiency of evidence, and denied respondent's Motion for Reconsideration.[6]

On petition for review, the Department of Justice (DOJ), by Resolution of July 20, 2005 signed by the Chief State Prosecutor for the Secretary of Justice,[7] *motu proprio* dismissed the petition on finding that there was no showing of any reversible error,

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[3] *Ibid.*

[4] *Id.* at 148-151.

[5] *Id.* at 183-187.

[6] *Id.* at 201-202.

[7] *Id.* at 51.

following **Section 12(c) of Department Circular No. 70 dated July 3, 2000 (National Prosecution Service [NPS] Rule on Appeal).**

Respondent's motion for reconsideration having been denied[8] by Resolution of January 23, 2006, he filed a petition for *certiorari* before the Court of Appeals which, by Decision of September 5, 2008,[9] *set aside* the DOJ Secretary's Resolution, holding that it committed grave abuse of discretion in issuing its Resolution dismissing respondent's petition for review without therein expressing clearly and distinctly the facts on which the dismissal was based, in violation of Section 14, Article VIII of the Constitution.[10]

The appellate court went on to hold that the matter of disposing the petition outright is clearly delineated, not under Section 12 but, under Section 7 of the NPS Rule on Appeal which categorically directs the Secretary to dismiss outright an appeal or a petition for review filed after arraignment; and that under Section 7, the Secretary may dismiss the petition outright if he finds the same to be patently without merit, or manifestly intended for delay, or when the issues raised are too unsubstantial to require consideration.[11]

Petitioner's Motion for Reconsideration having been denied by the appellate court, she filed the present petition for review on *certiorari*.

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[8] *Id.* at 67.

[9] *Rollo*, pp. 53-70. Penned by Associate Justice Noel G. Tijam with Associate Justices Martin S. Villarama, Jr. (now a member of the Court) and Arturo G. Tayag concurring.

[10] Section 14. No decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

[11] CA *rollo*, pp. 60-61.

Petitioner asserts that the requirement in Section 14, Article VIII of the Constitution applies only to decisions of "courts of justice"[12]; that, citing *Solid Homes, Inc. v. Laserna*,[13] the constitutional provision does not extend to decisions or rulings of executive departments such as the DOJ; and that Section 12(c) of the NPS Rule on Appeal allows the DOJ to dismiss a petition for review *motu proprio*, and the use of the word "outright" in the DOJ Resolution simply means "altogether," "entirely" or "openly."[14]

In his Comment, respondent counters that the constitutional requirement is not limited to courts, citing *Presidential Ad hoc Fact-Finding Committee on Behest Loans v. Desierto*,[15] as it extends to quasi-judicial and administrative bodies, as well as to preliminary investigations conducted by these tribunals.

Further, respondent, citing *Adasa v. Abalos*,[16] argues that the DOJ "muddled" the distinction between Sections 7 and 12 of the NPS Rule on Appeal and that an "outright" dismissal is not allowed since the DOJ must set the reasons why it finds no reversible error[17] in an assailed resolution.

The petition is impressed with merit.

A preliminary investigation is not a quasi-judicial proceeding since "the prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused."[18]

> x x x [A prosecutor] does not exercise adjudication nor rule-making functions. **Preliminary investigation is merely inquisitorial,** and is often the only means of discovering the persons

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[12] *Rollo*, p. 24.

[13] G.R. No. 166051, April 8, 2008, 550 SCRA 613.

[14] *Rollo*, pp. 32-36.

[15] G.R. No. 135687, July 24, 2007, 528 SCRA 9.

[16] G.R. No. 168617, February 19, 2007, 516 SCRA 261.

[17] *Rollo*, pp. 451-456.

[18] *Bautista v. Court of Appeals*, 413 Phil. 159, 168 (2001).

who may be reasonably charged [of] a crime and to enable the [prosecutor] to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. **While the [prosecutor] makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the [prosecutor]**.[19] (emphasis and underscoring supplied)

A preliminary investigation thus partakes of an *investigative* or *inquisitorial power* for the sole purpose of obtaining information on what future action of a judicial nature may be taken.[20]

Balangauan v. Court of Appeals[21] in fact iterates that even the action of the Secretary of Justice in reviewing a prosecutor's order or resolution via appeal or petition for review cannot be considered a quasi-judicial proceeding since the "DOJ is not a quasi-judicial body."[22] Section 14, Article VIII of the Constitution does not thus extend to resolutions issued by the DOJ Secretary.

Respondent posits, however, that *Balangauan* finds no application in the present case for, as the Supreme Court stated, the DOJ "rectified the shortness of its first resolution by issuing a lengthier one when it resolved [the therein] respondent[']s . . . motion for reconsideration."[23] Respondent's position fails.

Whether the DOJ in *Balangauan* issued an extended resolution in resolving the therein respondent's motion for reconsideration is immaterial. The extended resolution did not detract from settling that the DOJ is not a quasi-judicial body.

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[19] *Id.* at 168-169.

[20] *Sec. Evangelista v. Judge Jarencio*, 160-A Phil. 753, 762 (1975).

[21] G.R. No. 174350, August 13, 2008, 562 SCRA 184. *Vide* also *Santos v. Go*, G.R. No. 156081, October 19, 2005, 473 SCRA 350.

[22] *Id.* at 204.

[23] *Rollo*, p. 449.

Respondent's citation of *Presidential Ad hoc Fact-Finding Committee on Behest Loans* is misplaced as the Ombudsman dismissed the therein subject complaint *prior* to any preliminary investigation. The Ombudsman merely evaluated the complaint pursuant to Section 2, Rule II of the Rules of Procedure of the Office of the Ombudsman which reads:

SEC. 2. Evaluation.—**Upon evaluating the complaint, the investigating officer shall recommend whether it may be:**

a) dismissed outright for want of palpable merit;

b) referred to respondent for comment;

c) indorsed to the proper government office or agency which has jurisdiction over the case;

d) forwarded to the appropriate officer or official for fact-finding investigation;

e) referred for administrative adjudication; or

f) **subjected to a preliminary investigation.** (emphasis supplied)

Respecting the action of the Secretary of Justice on respondent's petition for review under Section 12 of the NPS Rule on Appeal, respondent posits that "outright" dismissal is not sanctioned thereunder but under Section 7. Respondent's position similarly fails.

That the DOJ Secretary used the word "outright" in dismissing respondent's petition for review under Section 12 of the Rule which reads:

SEC. 12. Disposition of the appeal.—The Secretary may reverse, affirm or modify the appealed resolution. He may, ***motu proprio*** or upon motion, dismiss the petition for review on any of the following grounds:

x x x x x x x x x

(a) That there is no showing of any reversible error;

x x x x x x x x x

(italics in the original; emphasis and underscoring supplied)

does not dent his action. To be sure, the word "outright" was merely used in conjunction with the *motu proprio* action.

Section 7 has an altogether different set of grounds for the outright dismissal of a petition for review. These are (a) when the petition is patently without merit; (b) when the petition is manifestly intended for delay; (c) when the issues raised therein are too unsubstantial to require consideration; and (d) when the accused has already been arraigned in court.[24]

When the Secretary of Justice is convinced that a petition for review does not suffer any of the infirmities laid down in Section 7, it can decide what action to take (*i.e.*, reverse, modify, affirm or dismiss the appeal altogether), conformably with Section 12. In other words, Sections 7 and 12 are part of a two-step approach in the DOJ Secretary's review power.

As for respondent's reliance on *Adasa*, it too fails for, unlike in the case of *Adasa*, herein petitioner has not been arraigned as in fact no Information has been filed against her.

In the absence of grave abuse of discretion on the part of a public prosecutor who alone determines the sufficiency of evidence that will establish probable cause in filing a criminal information,[25] courts will not interfere with his findings; otherwise, courts would be swamped with petitions to review the exercise of discretion on his part each time a criminal complaint is dismissed or given due course.[26]

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[24] SEC. 7. Action on the petition.—The Secretary of Justice may dismiss the petition outright if he finds the same to be patently without merit or manifestly intended for delay, or when the issues raised therein are too unsubstantial to require consideration.

If an information has been filed in court pursuant to the appealed resolution, the petition shall not be given due course if the accused has already been arraigned. Any arraignment made after the filing of the petition shall not bar the Secretary of Justice from exercising his power of review.

[25] *Sanrio Company Limited v. Lim*, G.R. No. 168662, February 19, 2008, 546 SCRA 303, 313.

[26] *Dumangcas v. Marcelo*, G.R. No. 159949, February 27, 2006, 483 SCRA 301, 314.

WHEREFORE, the petition for review on *certiorari* is *GRANTED*. The assailed Decision of the Court of Appeals is *REVERSED AND SET ASIDE* and the Resolutions of July 20, 2005 and January 23, 2006 of the Secretary of Justice are *REINSTATED*.

SO ORDERED.

Corona, C.J.,[*] *Brion, Bersamin,* and *Sereno, JJ.,* concur.

THIRD DIVISION

[G.R. No. 188650. October 6, 2010]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **PRISCILLA S. CORDOVA, Deputy Collector for Assessment, Bureau of Customs,** *respondent.*

[G.R. No. 187166. October 6, 2010]

DEPARTMENT OF FINANCE-REVENUE INTEGRITY PROTECTION SERVICE (DOF-RIPS) AND COMMISSIONER NAPOLEON MORALES, *petitioners, vs.* **PRISCILLA S. CORDOVA, Deputy Collector for Assessment, Bureau of Customs,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT OF 1989); PREVENTIVE SUSPENSION OF RESPONDENT FOR CHARGES OF DISHONESTY AND GRAVE MISCONDUCT,

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[*] Additional member per raffle dated January 18, 2010 in lieu of Justice Martin S. Villarama, Jr. who took no part due to prior action in the Court of Appeals.

JUSTIFIED; EVIDENCE OF RESPONDENT'S GUILT, FOUND STRONG.— A comparison of the engine and chassis numbers of the vehicles listed in the Complaint-Affidavit with those listed in the Certificates of Payment and Certifications shows that the serial numbers of at least three of the 14 vehicles subject of the Complaint-Affidavit match the serial numbers of those subject of the Certificates of Payment xxx. To the Court, this fact suffices to justify petitioner's preventive suspension of respondent under the provision of Section 24 of R.A. 6770. Whether the Certificates of Payment and Certifications issued by respondent were proffered by Hidemitsu Trading as evidence of payment of taxes/customs duties or by the BOC for its purposes is thus immaterial.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (Ombudsman) for the Office of the Ombudsman.

Editha Soledad C. De Castro and *Alvin M. Navarro* for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

The Department of Finance-Revenue Integrity Protection Service (DOF-RIPS), by Complaint-Affidavit[1] executed by two of its legal officers, charged on October 11, 2007 before the Office of the Ombudsman (OMB) Priscilla S. Cordova (respondent), Deputy Collector for Assessment of the Bureau of Customs, Port of Subic, together with Atty. Baltazar Morales (Morales), Chief of the Assessment Division, for violating, *inter alia*, Section 3(a) and (e) of Republic Act No. 3019,[2] the pertinent provisions of the Tariff and Customs Code, as amended, Republic Act No. 6713,[3] and the pertinent provisions of the Revised

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[1] *Rollo* of G.R. No. 188650, pp. 170-189.

[2] ANTI-GRAFT AND CORRUPT PRACTICES ACT.

[3] CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES.

Penal Code in connection with their alleged participation in the alleged smuggling of sixteen (16) high-end luxury vehicles consigned to Hidemitsu Trading Corporation (Hidemitsu Trading), 14[4] of which were taken out of the Subic Bay Freeport Zone (SBFZ) without paying the required taxes and duties therefor.

The Complaint-Affidavit alleged that respondent's act of issuing the 14 Certifications[5] that "per our record the following appears: FULLY PAID (IMPORTATION) . . ." and Certificates of Payment[6] attesting to the full payment of taxes due to the 14 vehicles, enabled their release from SBFZ without paying the required taxes and duties therefor.[7] Morales was accused of coordinating and conspiring with respondent.[8]

After preliminary investigation, the OMB, finding probable cause to hold respondent liable which may warrant her dismissal from the service, issued Order[9] dated November 12, 2007 placing respondent under preventive suspension without pay during the pendency of the administrative case, but not to exceed a total period of six (6) months. The Order was issued pursuant to Section 9 of Administrative Order (AO) No. 7, as amended, *vis-à-vis* Section 24 of Republic Act (RA) No. 6770.[10]

Section 9 of AO No. 7 reads:

SECTION 9. Preventive Suspension. Pending investigation, the respondent maybe preventively suspended without pay if, in the

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[4] *Rollo* of G.R. No. 188650 , p. 175 – Two (2) of the 16 abovementioned luxury vehicles, namely, the Mercedes Benz S550 (WDDNG71X17A060630) and S350 (WDBNF67J26A484664), where still inside the SMBA, and thus, had not been smuggled out, contrary to previous report.

[5] Annexes "B" to "B-13" inclusive, *Rollo* of G.R. No. 188650, pp. 204-217.

[6] Annexes "A" to "A-13" inclusive, *id.* at 190-203.

[7] *Id.* at 185.

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

[9] *Id.* at 152-160.

[10] THE OMBUDSMAN ACT OF 1989.

judgment of the Ombudsman or his proper deputy, the evidence of guilt is strong and (a) the charge against such officer or employee involves dishonesty, oppression or gross misconduct or gross neglect in the performance of duty; or (b) the charge would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the just, fair and independent disposition of the case filed against him.

Upon the other hand, Section 24 of RA No. 6770 reads:

SECTION 24. Preventive Suspension. The Ombudsman or his deputy may preventively suspend any officer or employee under his authority pending an investigation if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression, grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

In granting the prayer for preventive suspension of respondent, OMB ratiocinated as follows:

It became readily apparent from the pieces of evidence presented that there is a strong basis for this Office to grant the preventive suspension prayed for. The accusatory allegations contained in the complaint constitute an act of Dishonesty and Grave Misconduct which, if proved true, could warrant her removal from government service.

The evidence of guilt was given strength by the documentary evidence proving her possible participation in the anomalous release of the subject vehicles. The presence of her name and signature in the Certifications brings forth the *prima facie* presumption that she deliberately made a misrepresentation by making it appear in the said Certificates that the taxes due on the subject vehicles were paid when, in truth and in fact, it was not.[11] (underscoring supplied)

With respect to Morales, the OMB dismissed the complaint against him after noting that all that was proffered to substantiate the accusation against him was his being the right-hand man and trusted lieutenant of respondent.

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[11] *Rollo* of G.R. No. 188650, pp. 156-157.

Respondent assailed the OMB's November 12, 2007 Order *via Certiorari*, Prohibition, and Injunction[12] before the Court of Appeals, contending that the suspension order was issued without giving her due notice and an opportunity to be heard; and that the evidence of her guilt is not strong because the supporting documents attached to the Complaint-Affidavit do not pertain to the vehicles allegedly smuggled. Respondent likewise sought injunctive relief against Commissioner Napoleon Morales (Commissioner Morales) of the Bureau of Customs (BOC) for his efforts to enforce the OMB Order.[13]

By Decision[14] of February 27, 2009, the Court of Appeals *set aside* the OMB Order for having been issued with grave abuse of discretion.

In setting aside the OMB Order, the appellate court, citing *Hagad v. Gozo-Dadole*,[15] held that while preventive suspension can be decreed on an official under investigation after charges are brought and even before the charges are heard, evidence sufficiently strong to justify the imposition of preventive suspension was wanting. For, the appellate court reasoned, the engine and serial numbers of the allegedly smuggled vehicles enumerated in the Complaint-Affidavit were indeed different from those of the vehicles reflected in the Certificates of Payment and Certifications issued by respondent.

The OMB moved for reconsideration but the motion was, by Resolution[16] of June 23, 2009, denied. OMB assailed the appellate court's issuances by petition for review filed with the Court, docketed as G.R. No. 188650. DOF-RIPS, together with Commissioner Morales, filed a separate petition for review,

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[12] *Id.* at 91-151.

[13] *Id.* at 95.

[14] *Id.* at 42-53. Penned by Justice Japar B. Dimaampao, with the concurrence of Justices Rebecca de Guia Salvador and Sixto C. Marella, Jr.

[15] G.R. No. 108072, 251 SCRA 242, 243 (1995).

[16] *Id.* at 56-59.

docketed as G.R. No. 187166. By Resolution[17] of August 19, 2009, the Court consolidated the petitions.

In G.R. No. 188650, the OMB posits that while there may be discrepancies in the description of the vehicles in the Certificates of Payment and Certifications issued by respondent *vis-à-vis* those of the vehicles listed in the Complaint-Affidavit, these could be mere typographical errors, or could have been deliberately made by respondent and her office to hide the irregularities attendant to the smuggling of the vehicles.[18]

On the other hand, in G.R. No. 187166, DOF-RIPS and Commissioner Morales point out that 14 of the 16 vehicles in question were subjected to seizure and forfeiture proceedings before the Office of the Collector of Customs during which the same set of evidence consisting of, among others, the Certificates was presented; and that the vehicles were eventually forfeitured.[19] They assert that a comparison of the description of the vehicles listed in the Complaint-Affidavit with that reflected in the Consolidated Decision[20] dated June 15, 2007 of the Collector of Customs in the Port of Subic reveals no discrepancies.

In her Comment,[21] respondent, reiterating her claim that the Certificates of Payment and Certifications show that the vehicles subject thereof are not the same vehicles smuggled out of the SBFZ,[22] argues that those certifications were proffered, not by the Republic of the Philippines or the BOC but, by Hidemitsu Trading purportedly to prove payment of taxes/customs duties thereon; and that the BOC's forfeiting of the vehicles in favor of the government for non-payment of taxes/customs duties

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[17] *Rollo* of G.R. No. 187166, pp. 146-147.

[18] *Id.* at 27.

[19] *Rollo* of G.R. No. 187166, pp. 19-20.

[20] *Id.* at pp. 135-140.

[21] *Rollo* of G.R. No. 188650, pp. 260-273.

[22] *Id.* at 266.

shows that the certificates were not favorably considered by BOC as evidence of payment.[23]

The petition is meritorious.

A comparison of the engine and chassis numbers of the vehicles listed in the Complaint-Affidavit with those listed in the Certificates of Payment and Certifications shows that the serial numbers of at least three of the 14 vehicles subject of the Complaint-Affidavit match the serial numbers of those subject of the Certificates of Payment, *viz*:

Serial Numbers in the Complaint Affidavit	Serial Numbers reflected in the Certificate of Payment
BMW 750 Li – WBAHN83516DT62802[24]	BMW - WBAHN83516DT62802 (Annex "A")[25]
BMW 750 Li - WBAHN83506DT60605[26]	BMW 750 Li- WBAHN83506DT60605 (Annex "A-5")[27]
AUDI A8I - WAUML44E16N018196[28]	AUDI - WAUML44E16N018196 (Annex "A-10")[29]

To the Court, this fact suffices to justify petitioner's preventive suspension of respondent under the earlier-quoted provision of Section 24 of R.A. 6770.

Whether the Certificates of Payment and Certifications issued by respondent were proffered by Hidemitsu Trading as evidence

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[23] *Id.* at 270.

[24] *Id.* at 176.

[25] *Id.* at 190.

[26] *Id.* at 174.

[27] *Id.* at 195.

[28] *Id.* at 174.

[29] *Id.* at 200.

of payment of taxes/customs duties or by the BOC for its purposes is thus immaterial.

WHEREFORE, the petition is *GRANTED*. The Court of Appeals Decision dated February 27, 2009 and Resolution dated June 23, 2009 are *REVERSED* and *SET ASIDE*. The November 12, 2007 Order of petitioner, the Office of the Ombudsman, for the preventive suspension of respondent is *REINSTATED*.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 190381. October 6, 2010]

COCA-COLA BOTTLERS PHILIPPINES, INC., *petitioner, vs.* **RODRIGO MERCADO, ANTONIO VILLERO, LUISITO MANTIBE, MARCELO FABIAN, EDMUNDO YALUNG, EDILBERTO GUEVARRA, MICHAEL GUICO, ANGEL FERNANDO, ERNESTO DELA CRUZ, EFREN FERNANDO, ROBERTO TORRES, JIMMY DUNGO, WILLY OCAMPO, SANDRO DIZON, ALLAN OCAMPO, CARLITO MANABAT, CARLITO SINGIAN, JAY MANABAT, ERIC AQUINO, RODRIGO DAVID, NICOLAS LUQUIAZ,[*] LUCIO MANTIBE, PRUDENCIO PALALON, RAFAEL CABRERA, ROMMER**

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[*] Also referred to as Nicolas Luquias in the Compromise Agreement and in the Joint Release, Waiver and Quitclaim.

SINGIAN,[**] ROGELIO MALIT, ALVIN ANDAYA, EMERITO B. DUNGCA, ALMIRANTE GORAL,[***] and NICOLAS CURA, *respondents*.

SYLLABUS

CIVIL LAW; COMPROMISE; COMPROMISE AGREEMENT; DEFINED; HAS THE EFFECT AND AUTHORITY OF *RES JUDICATA* UPON APPROVAL BY THE COURT; COMPROMISE AGREEMENT BETWEEN THE PARTIES SHALL BE ACCEPTED AND AFFIRMED BY THE COURT IF FOUND TO BE VALIDLY EXECUTED, AND NOT CONTRARY TO LAW, MORALS, GOOD CUSTOMS, PUBLIC ORDER AND PUBLIC POLICY.— Under the Civil Code of the Philippines, contracting parties may establish such stipulations, clauses, terms, and conditions, as they deem convenient, so long as they are not contrary to law, morals, good customs, public order, or public policy. A compromise agreement is a contract whereby the parties undertake reciprocal obligations to resolve their differences in order to avoid litigation or put an end to one already instituted. It is a judicial covenant having the force and effect of a judgment, subject to execution in accordance with the Rules of Court, and having the effect and authority of *res judicata* upon its approval by the court where the litigation is pending. Finding the Compromise Agreement dated June 16, 2010 between petitioner and respondents to be validly executed, not being contrary to law, morals, good customs, public order, or public policy, we, therefore, accept and affirm the same.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioner.

Nenita C. Mahinay for respondents.

[**] Also referred to as Romer Singian in the Compromise Agreement and in the Joint Release, Waiver and Quitclaim.

[***] Also referred to as Almerante Goral in the Compromise Agreement and in the Joint Release, Waiver and Quitclaim.

R E S O L U T I O N

NACHURA,[****] ***J.*:**

Before us is a Manifestation and Motion[1] filed by respondents, stating that petitioner has satisfied the judgment award in their favor by way of a Compromise Agreement[2] dated June 16, 2010. On the basis of the Compromise Agreement, the parties filed a motion for judgment, which was granted by the Labor Arbiter in an Order[3] dated June 21, 2010, declaring NLRC Case No. RAB-III-02-3910-02,[4] the origin of the instant case, as closed and terminated. Respondents pray that the petition for review before us be dismissed for having been rendered moot and academic by petitioner's satisfaction of judgment. The Compromise Agreement reads—

COMPROMISE AGREEMENT

WHEREAS, in February 2002, **MICHAEL MEROVIN GUICO** ["Guico"], **ANGEL FERNANDO** ["Fernando"], **LUISITO MANTIBE** ["Mantibe"], **WILLY OCAMPO** ["Ocampo"], **ALLAN OCAMPO** ["Ocampo"], **ALMERANTE GORAL** ["Goral"], **CARLITO MANABAT** ["Manabat"], **ERNESTO DELA CRUZ** ["Dela Cruz"], **JAY MANABAT** ["Manabat"], **NICOLAS CURA** ["Cura"], **SANDRO DIZON** ["Dizon"], **NICOLAS LUQUIAS** ["Luquias"], **RODRIGO MERCADO** ["Mercado"], **ALVIN ANDAYA** ["Andaya"], **ANTONIO VILLERO** ["Villero"], **EDILBERTO GUEVARRA** ["Guevarra"], **EFREN FERNANDO** ["Fernando"], **EMERITO DUNGCA** ["Dungca"], **ERIC AQUINO** ["Aquino"], **JIMMY DUNGO** ["Dungo"], **MARCELO FABIAN** ["Fabian"], **ROBERTO TORRES** ["Torres"], **RODRIGO DAVID** ["David"], **ROMER SINGIAN** ["Singian"],

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[****] In liue of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 28, 2010.

[1] *Rollo,* pp. 616-618.

[2] *Id.* at 625-629.

[3] *Id.* at 619.

[4] Entitled, "*IBM Local I, Rodrigo Mercado, et al. v. Coca-Cola Bottlers Phils., Inc., R.S. Cunanan General Services and Romac Services and Trading Corporation*."

CARLITO SINGIAN ["Singian"], **EDMUNDO YALUNG** ["Yalung"], **PRUDENCIO PALALON** ["Palalon"], **RAFAEL CABRERA** ["Cabrera"], **ROGELIO MALIT** ["Malit"] and **LUCIO MANTIBE** ["Mantibe"] (collectively, the "Complainants") were among the complainants who filed a complaint for illegal dismissal and regularization with claims for wage and benefits differential according to CBA, moral and exemplary damages against **COCA COLA BOTTLERS PHILIPPINES INC.** [the "Company"] docketed as NLRC Case No. RAB-III-02-3901-02 and NLRC NCR CA No. 037888-03 entitled "Rodrigo Mercado, *et al. v.* Coca-Cola Bottlers Phils., Inc., *et al.*"

WHEREAS, on 30 September 2003, Labor Arbiter Herminio V. Suelo rendered a Decision dismissing the Complaint against the Company;

WHEREAS, complainant' Appeal was granted by the NLRC in its 30 July 2008 Resolution; the dispositive portion of which states:

> WHEREFORE, the Motion for Reconsideration of complainants is GRANTED. The Decision dated January 31, 2005 is SET ASIDE and VACATED, and NEW ONE entered;
>
> (a) declaring respondent Coca-Cola Bottlers Phils., Inc. as the employer of complainants;
>
> (b) finding complainants to have been dismissed illegally;
>
> (c) ordering Coca-Cola Bottlers Philippines, Inc. to reinstate complainants to their former positions as regular employees without loss of seniority rights and with other privileges and with payment of full backwages from the date of dismissal on June 3, 2002 until actual reinstatement;
>
> (d) declaring Romac Services & Trading Co. Inc. and Rogelio S. Cunanan General Services to be engaged in labor-only contracting; and
>
> (e) ordering respondent Coca-Cola Bottlers Phils. Inc. to pay attorney's fees at 10% of the total award.
>
> The other claims are dismissed for lack of merit.
>
> SO ORDERED.

WHEREAS, CCBPI filed a Petition for *Certiorari* with the Court of Appeals docketed as CA G.R. SP No. 108404 entitled "*Coca-*

Cola Bottlers Philippines, Inc. vs. National Labor Relations Commission and Rodrigo Mercado, et al."

WHEREAS, on 20 August 2009, the Eight Division of the Court of Appeals rendered a Decision denying the Petition;

WHEREAS, the Company filed a Motion for Reconsideration which was denied by the Court of Appeals in its 18 November 2009 Resolution;

WHEREAS, the Company filed a Petition for Review on *Certiorari* with the Supreme Court, which is docketed as G.R. No. 190381 entitled "*Coca-Cola Bottlers Philippines, Inc. vs. Rodrigo Mercado, et al.*"

WHEREAS, the Company has nevertheless decided to settle/satisfy complainants' claims/award and thus put an end to NLRC Case No. RAB-III-02-3901-02; NLRC NCR CA No. 037888-03; CA G.R. SP No. 108404 and G.R. No. 190381;

NOW THEREFORE, for and in consideration of the foregoing premises and the mutual covenants set forth hereinbelow, the parties agree as follows:

1. Complainants shall each receive financial assistance in the amount as follows:

NAME	AMOUNT
Michael Merovin Guico	₱ 2,153,850.00
Angel Fernando	2,266,300.00
Luisito Mantibe	2,266,300.00
Willy Ocampo	2,266,300.00
Allan Ocampo	2,655,550.00
Almerante Goral	2,655,550.00
Carlito Manabat	2,655,550.00
Ernesto Dela Cruz	2,655,550.00
Jay Manabat	2,655,550.00
Nicolas Cura	2,655,550.00
Sandro Dizon	2,655,550.00
Nicolas Luquias	2,941,000.00
Rodrigo Mercado	2,941,000.00
Alvin Andaya	3,036,150.00
Antonio Villero	3,036,150.00
Edilberto Guevarra	3,036,150.00
Efren Fernando	3,036,150.00

Emerito Dungca	3,036,150.00
Eric Aquino	3,036,150.00
Jimmy Dungo	3,036,150.00
Marcelo Fabian	3,036,150.00
Roberto Torres	3,036,150.00
Rodrigo David	3,036,150.00
Romer Singian	3,036,150.00
Carlito Singian	3,269,700.00
Edmundo Yalung	3,269,700.00
Prudencio Palalon	3,269,700.00
Rafael Cabrera	3,269,700.00
Rogelio Malit	3,269,700.00
Lucio Mantibe	3,330,250.00

as complete settlement of their claims in NLRC NCR Case No. 00-07-07574-99/NLRC NCR CA No. 030908-02 and/or full satisfaction of the judgment award, including the reinstatement aspect thereof, in CA G.R. SP No. 108404 and G.R. No. 190381.

2. Complainants agree that the amount received is in consideration of any and all monetary claims they might have as well as and including separation pay in lieu of their actual reinstatement as regular employees including any other liability or claims arising from, in relation to and/or in connection with their assignment with the Company.

3. By virtue of this Agreement, complainants consider their claims (including the reinstatement aspect thereof) in NLRC RAB III-02-3901-02/NLRC NCR CA No. 037888-03 as fully settled, and the judgment award in CA G.R. SP No. 108404 and G.R. No. 190381 (including the reinstatement aspect thereof) as fully satisfied, and hereby consider said cases as dismissed, with prejudice, and undertake to desist from prosecuting and/or instituting any other case or claim against any and/or all the respondents.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures this 16th day of June 2010 at the City of San Fernando, Pampanga.

COMPLAINANTS:

(Signed)
MICHAEL MEROVIN GUICO

LAGUESMA MAGSALIN CONSULTA & GASTARDO
Counsel for Coca-Cola Bottlers Philippines, Inc.
706 Prestige Tower, F. Ortigas Jr. Road Ortigas Center, Pasig City

(Signed)
ANGEL FERNANDO

(Signed)
LUISITO MANTIBE

(Signed)
WILLY OCAMPO

(Signed)
ALLAN OCAMPO

(Signed)
ALMERANTE GORAL

(Signed)
CARLITO MANABAT

(Signed)
ERNESTO DELA CRUZ

(Signed)
JAY MANABAT

(Signed)
NICOLAS CURA

(Signed)
SANDRO DIZON

(Signed)
NICOLAS LUQUIAS

(Signed)
RODRIGO MERCADO

(Signed)
ALVIN ANDAYA

(Signed)
ANTONIO VILLERO

(Signed)
EDILBERTO GUEVARRA

(Signed)
EFREN FERNANDO

(Signed)
EMERITO DUNGCA

By:

BERNARDINO F. CONSULTA
PTR No. 5922571; 01-11-10; Pasig City
IBP No. 810944; 01-11-10; Quezon City
Roll No. 33337
MCLE Compliance No. III-0010894
31 March 2010

(Signed)
CARLOS LUIS L. FERNANDEZ
PTR No. 5922576; 01-11-10; Pasig City
IBP No. 810942; 01-11-10; Quezon City
Roll No. 45321
MCLE Compliance No. III-0010898
31 March 2010

(Signed)
ERIC AQUINO

(Signed)
JIMMY DUNGO

(Signed)
MARCELO FABIAN

(Signed)
ROBERTO TORRES

(Signed)
RODRIGO DAVID

(Signed)
ROMER SINGIAN

(Signed)
CARLITO SINGIAN

(Signed)
EDMUNDO YALUNG

(Signed)
PRUDENCIO PALALON

(Signed)
RAFAEL CABRERA

(Signed)
ROGELIO MALIT

(Signed)
LUCIO MANTIBE

Assisted by:

(Signed)
ATTY. NENITA C. MAHINAY

In its own Manifestation and Compliance,[5] petitioner confirms the parties' amicable settlement through the Compromise Agreement and professes that it interposes no objection to respondents' prayer for dismissal of the petition. Petitioner also submits, aside from a copy of the Compromise Agreement, a Joint Release, Waiver and Quitclaim[6] dated June 16, 2010,

[5] *Rollo*, pp. 621-624.

[6] *Id.* at 630-633.

where the respondents acknowledged receipt of the amounts indicated in the Compromise Agreement as complete settlement of all their claims against petitioner, relative to this case, and in consideration of which they—

1. x x x remise, release and forever discharge the Company, its successors-in-interest, stockholders, officers, directors, agents or employees from any action, sum of money, damages, claims and demands whatsoever, which in law or in equity [they] ever had, now have, or which [they, their] successors and assigns hereafter may have by reason of any matter, cause or thing whatsoever, up to the time of these presents, the intention hereof being completely and absolutely to release the Company as well as its successors-in-interest, stockholders, officers, directors, agents or employees from all liabilities arising wholly, partially or directly from our temporary assignment/engagement with the Company.

2. x x x acknowledge the temporary nature of [their] assignment/engagement with the Company and the absence of an employer-employee relationship between [them] and the Company, and [they] further acknowledge that [they] have no intention whatsoever of being reinstated to [their] previous assignment at the Company.

3. x x x also manifest that the payment by the Company of any or all of the foregoing sum of money shall not be taken by [them, their] heirs or assigns as a confession and/or admission of liability on the part of the Company, as well as its successors-in-interest, stockholders, officers, directors, agents or employees for any matter, cause, demand or claim that [they] may have against any or all of them. [They] acknowledge that [they] have received all amounts that are now, or in the future, may be due [them] from the Company. [They] also acknowledge that during the entire period of [their] temporary assignment/engagement with the Company, [they] received and were paid all compensations, benefits and privileges to which [they] were entitled under the law, and if [they] are hereinafter be found in any manner to have been entitled to any amount, the above consideration is a full and complete satisfaction of any and all such undisclosed claims.

4. x x x warrant that [they] will institute no action and will not continue to prosecute any pending action, against the Company, as well as its successors-in-interest, stockholders, officers, directors, agents or employees, by reason of [their] temporary assignment/

engagement with the Company, including the case docketed as G.R. No. 190381 pending before the Supreme Court.

5. x x x finally declare that [they] have read and fully understand this document, and the release, waiver and quitclaim hereby given is made willingly and voluntarily and with full knowledge of [their] rights under the law.[7]

The Joint Release, Waiver and Quitclaim was signed individually by respondents and their counsel of record.

Under the Civil Code of the Philippines,[8] contracting parties may establish such stipulations, clauses, terms, and conditions, as they deem convenient, so long as they are not contrary to law, morals, good customs, public order, or public policy. A compromise agreement is a contract whereby the parties undertake reciprocal obligations to resolve their differences in order to avoid litigation or put an end to one already instituted.[9] It is a judicial covenant having the force and effect of a judgment, subject to execution in accordance with the Rules of Court, and having the effect and authority of *res judicata* upon its approval by the court where the litigation is pending.[10]

Finding the Compromise Agreement dated June 16, 2010 between petitioner and respondents to be validly executed, not being contrary to law, morals, good customs, public order, or public policy, we, therefore, accept and affirm the same.

WHEREFORE, the Manifestation and Motion of respondents Rodrigo Mercado, *et al*. is *GRANTED*. The Compromise

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[7] *Id.* at 631.

[8] Article 1306.

[9] *Calingin v. Civil Service Commission*, G.R. No. 183322, October 30, 2009, 604 SCRA 818, 824; *Valdez v. Financiera Manila, Inc.*, G.R. No. 183387, September 29, 2009, 601 SCRA 291, 310-311; *California Manufacturing Company, Inc. v. City of Las Piñas, The*, G.R. No. 178461, June 22, 2009, 590 SCRA 453, 457.

[10] *California Manufacturing Company, Inc. v. City of Las Piñas, The*, *id.*; *Viesca v. Gilinsky*, G.R. No. 171698, July 4, 2007, 526 SCRA 533, 557-558.

Agreement dated June 16, 2010 between petitioner Coca-Cola Bottlers Philippines, Inc. and respondents Rodrigo Mercado, *et al*. is *AFFIRMED*, and judgment is rendered accordingly. The instant controversy is *DISMISSED*. No costs.

SO ORDERED.

Velasco, Jr.,[*****] *Peralta, Mendoza,* and *Sereno,*[******] *JJ.*, concur.

[*****] In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 28, 2010.

[******] Additional member in lieu of Associate Justice Roberto A. Abad per Special Order No. 903 dated September 28, 2010.

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— Will not issue to protect purely property or commercial concerns nor when the grounds invoked in support of the petition therefor are vague or doubtful. *(Id.)*

HOUSING AND LAND USE REGULATORY BOARD (HLURB)

Jurisdiction — Exclusive over cases involving: (1) unsound real estate business practices; (2) claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and (3) cases involving specific performance of contractual and statutory obligations filed by a buyer of a subdivision lot or condominium unit against the owner, developer, dealer, broker, or salesman. (Calara *vs.* Francisco, G.R. No. 156439, Sept. 29, 2010) p. 122

— The mere relationship of the parties as a subdivision developer/owner and subdivision lot buyer does not, concededly, vest the HLURB with automatic jurisdiction over a case. *(Id.)*

HUMAN RELATIONS

Abuse of rights — A violation of the principle embodied in Article 19 of the Civil Code constitutes an abuse of rights which is a tortious conduct. (Manaloto *vs.* Veloso III, G.R. No. 171365, Oct. 06, 2010) p. 639

Respect of dignity, personality, privacy and peace of mind of another — Violation thereof allows recovery of moral damages. (Manaloto vs. Veloso III, G.R. No. 171365, Oct. 06, 2010) p. 639

HUMAN SECURITY ACT OF 2007 (R.A. NO. 9372)

Application — Seeks to penalize conduct, not speech. (Southern Hemisphere Engagement Network, Inc. vs. Anti-Terrorism Council, G.R. No. 178552, Oct. 05, 2010) p. 452

Crime of terrorism —The following elements may be culled: (1) the offender commits an act punishable under any of the cited provisions of the Revised Penal Code, or under any of the enumerated special penal laws; (2) the commission of the predicate crime sows and creates a condition of widespread and extraordinary fear and panic among the populace; and (3) the offender is actuated by the desire

to coerce the government to give in to an unlawful demand. (Southern Hemisphere Engagement Network, Inc. *vs*. Anti-Terrorism Council, G.R. No. 178552, Oct. 05, 2010) p. 452

JUDGES

Administrative complaint against judges — In determining the sanction to be imposed on errant magistrates, the Court considers the factual milieu of each case, the offending acts or omissions of the judges, as well as previous transgressions, if any. (Judge Angeles *vs*. Judge Diy, A.M. No. RTJ-10-2248, Sept. 29, 2010) p. 74

— Judges may be rendered administratively accountable for failure to perform a duty enjoined by the Rules of Court. (Ferrer *vs*. Judge Rabaca, A.M. No. MTJ-05-1580, Oct. 06, 2010) p. 505

— Not every error or mistake a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice. (3-D Industries, Inc. *vs*. Justice Roxas, A.M. No. CA-10-50-J, Oct. 05, 2010) p. 422

Bad faith or malice — Connotes not only bad judgment or negligence, but also a dishonest purpose, a conscious wrongdoing, or a breach of duty amounting to fraud. (3-D Industries, Inc. *vs*. Justice Roxas, A.M. No. CA-10-50-J, Oct. 05, 2010) p. 422

Duties — Judges are required to decide all cases within three (3) months from date of submission. (Olaguer *vs*. Judge Ampuan, A.M. No. MTJ-10-1769, Oct. 06, 2010) p. 527

— Judges should keep their own record or notes of cases pending before their sala, especially those that are pending for more than 90 days, so that they can act on them promptly and without delay. (Judge Angeles *vs*. Judge Diy, A.M. No. RTJ-10-2248, Sept. 29, 2010) p. 74

Gross ignorance of the law — Classified as a serious offense for which the imposable penalty ranges from a fine to dismissal. (Ferrer *vs*. Judge Rabaca, A.M. No. MTJ-05-1580, Oct. 06, 2010) p. 505

Gross inefficiency — Committed in case of failure of a judge to decide cases within the reglementary period, without strong and justifiable reason.(OCAD *vs*. Judge Quilatan, A.M. No. MTJ-09-1745, Sept. 28, 2010) p. 45

Gross negligence — Defined as 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 intentionally, with a conscious indifference to consequences as far as other persons are concerned. (3-D Industries, Inc. *vs*. Justice Roxas, A.M. No. CA-10-50-J, Oct. 05, 2010) p. 422

Manifest partiality — Defined as a clear, notorious or plain inclination or predeliction to favor one side rather than the other. (3-D Industries, Inc. *vs*. Justice Roxas, A.M. No. CA-10-50-J, Oct. 05, 2010) p. 422

Undue delay in rendering a decision or order — Cannot be excused or condoned. (Judge Angeles *vs*. Judge Sempio Diy, A.M. No. RTJ-10-2248, Sept. 29, 2010) p. 74

— Claim of death threats on her and her staff, if real, would not constitute a valid excuse for her inaction. *(Id.)*

— Classified as a less serious offense. (Raymundo *vs*. Judge Andoy, A.M. No. MTJ-09-1738, Oct. 06, 2010) p. 518

— Committed in case of failure to decide a case or resolve a motion within the reglementary period; penalty. *(Id.)*

— Fine may be imposed below or more than the maximum amount allowed. (OCAD *vs*. Judge Quilatan, A.M. No. MTJ-09-1745, Sept. 28, 2010) p. 45

— Not excused by additional court assignments as an extension of time to decide a case can be requested. (Olaguer *vs*. Judge Ampuan, A.M. No. MTJ-10-1769, Oct. 06, 2010) p. 527

JUDGMENTS

Execution of — The deciding court has supervisory control over the execution of its judgment and said supervisory control does not include the alteration or amendment of

a final and executory decision save for certain recognized exceptions, like the correction of clerical errors. (Kukan Int'l. Corp. *vs*. Judge Reyes, G.R. No. 182729, Sept. 29, 2010) p. 210

— The writ of execution must conform to the fallo of the judgment and a writ beyond the terms of the judgment is a nullity. *(Id.)*

Validity of — Requirement that the decision must state the legal basis thereof does not extend to resolutions issued by the Department of Justice; reason. (Atty. Odchigue-Bondoc *vs*. Tan Tiong Bio, G.R. No. 186652, Oct. 06, 2010) p. 743

JUDICIAL NOTICE

Material requisites — Judicial notice has three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. (Southern Hemisphere Engagement Network, Inc. *vs*. Anti-Terrorism Council, G.R. No. 178552, Oct. 05, 2010) p. 452

JUDICIAL REVIEW

Actual case or controversy — Defined as an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion. (Southern Hemisphere Engagement Network, Inc. *vs*. Anti-Terrorism Council, G.R. No. 178552, Oct. 05, 2010) p. 452

Judicial review of statutes — Striking down a legislative enactment, or any of its provisions, can be done only by way of a direct action and not for the first time on appeal and the challenge to the law's constitutionality should also be raised at the earliest opportunity. (Surigao del Norte Electric Cooperative, Inc. *vs*. Energy Regulatory Board, G.R. No. 183626, Oct. 04, 2010) p. 402

Legal standing/locus standi — Cannot be asserted by those who claim to have been the subject of political surveillance. (Southern Hemisphere Engagement Network, Inc. *vs.* Anti-Terrorism Council, G.R. No. 178552, Oct. 05, 2010) p. 452

— Cannot be claimed by mere invocation of the duty to preserve the rule of law. *(Id.)*

— Cannot be claimed on the basis of a mere invocation of a human rights advocacy. *(Id.)*

— Requires a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions. *(id.)*

Power of — Limited by four exacting requisites, viz: (1) there must be an actual case or controversy; (2) petitioners must possess locus standi; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the lis mota of the case, (Southern Hemisphere Engagement Network, Inc. *vs*. Anti-Terrorism Council, G.R. No. 178552, Oct. 05, 2010) p. 452

JURISDICTION

Jurisdiction over the person — A special appearance before the court challenging its jurisdiction over the person through a motion to dismiss even if the movant invokes other grounds is not tantamount to estoppel or waiver by the movant of his objection thereto; and such is not constitutive of a voluntary submission to the jurisdiction of the court. (Kukan Int'l. Corp. *vs*. Judge Reyes, G.R. No. 182729, Sept. 29, 2010) p. 210

— Acquired by voluntary appearance of the person. *(Id.)*

LABOR CONTRACTING OR SUB-CONTRACTING

Contracting or subcontracting — Refers to an arrangement whereby a 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. (Manila Water Co., Inc. *vs*. Dalumpines, G.R. No. 175501, Oct. 04, 2010) p. 383

Independent and permissible contractor relationship — Its existence is generally established by the following criteria: whether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of a specified piece of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply the premises, tools, appliances, materials, and labor; and the mode, manner and terms of payment. (Manila Water Co., Inc. *vs*. Dalumpines, G.R. No. 175501, Oct. 04, 2010) p. 383

Labor-only contracting — Exists where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer. (Manila Water Co., Inc. *vs*. Dalumpines, G.R. No. 175501, Oct. 04, 2010) p. 383

Right to control — Refers to the right reserved to the person for whom the services of the contracted workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end. (Manila Water Co., Inc. *vs*. Dalumpines, G.R. No. 175501, Oct. 04, 2010) p. 383

Substantial capital or investment — Refers to capital stocks and subscribed capitalization in the case of corporation, tools, equipment, implements, machineries, and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the

job, work, or service contracted out. (Manila Water Co., Inc. *vs*. Dalumpines, G.R. No. 175501, Oct. 04, 2010) p. 383

LACHES

Doctrine of —Refers to the failure or neglect, for an unreasonable length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. (Sps. Paringit *vs*. Bajit, G.R. No. 181844, Sept. 29, 2010) p. 199

LAND REGISTRATION ACT (ACT NO. 496)

Certificate of Title — One who deals with property registered under the Torrens system need not go beyond the same, but only has to rely on the certificate of title. (Camper Realty Corp. *vs*. Pajo-Reyes, G.R. No. 179543, Oct. 06, 2010) p. 689

(Heirs of Romana Saves *vs*. Heirs of Escolastico Saves, G.R. No. 152866, Oct. 06, 2010) p. 536

LEGAL FEES

Docket fees — As to payment thereof, in any claim for damages arising after the filing of the complaint, the additional filing fee therefor shall constitute a lien on the judgment. (GSIS *vs*. Heirs of Fernando F. Caballero, G.R. No. 158090, Oct. 04, 2010) p. 314

Exemption from payment — Government Service Insurance System (GSIS), not included therefrom. (GSIS *vs*. Heirs of Fernando F. Caballero, G.R. No. 158090, Oct. 04, 2010) p. 314

LOCAL GOVERNMENT CODE (R.A. NO. 7160)

Members of Sanggunian — Cannot appear as counsel of a party adverse to an instrumentality of the government. (Rep. of the Phils. *vs*. Atty. Richard Rambuyong, G.R. No. 167810, Oct. 04, 2010) p. 373

MORTGAGES

Foreclosure of mortgage — A necessary consequence of non-payment of a mortgage indebtedness. (RCBC *vs*. Buenaventura, G.R. No. 176479, Oct. 06, 2010) p. 673

MOTION TO DISMISS

Failure to state a cause of action as a ground — Such fact can be determined only from the facts alleged in the complaint and from no other, and the court cannot consider other matters aliunde. (Manaloto *vs*. Veloso III, G.R. No. 171365, Oct. 06, 2010) p. 639

Litis pendentia as a ground — The requisites are: (1) identity of parties, or at least such as representing the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) identity of the two cases such that judgment in one, regardless of which party is successful, would amount to res judicata in the other. (Romullo *vs*. Samahang Magkakapitbahay ng Bayanihan Compound Homeowners Assn., Inc., G.R. No. 180687, Oct. 06, 2010) p. 699

NATIONAL LABOR RELATIONS COMMISSION

Jurisdiction over the parties — Acquired either by summons served on them or by their voluntary appearance before its Labor Arbiter. (C. Alcantara & Sons, Inc. *vs*. CA, G.R. No. 155109, Sept. 29, 2010) p. 105

NATIONAL POWER CORPORATION

Nature — A government-owned and controlled corporation included within the term "instrumentality of the government." (Rep. of the Phils. *vs*. Atty. Richard Rambuyong, G.R. No. 167810, Oct. 04, 2010) p. 373

OBLIGATIONS

Nature and effect of — The receipt of a later installment of debt raises the presumption that the previous installment had been paid. (RCBC *vs*. Buenaventura, G.R. No. 176479, Oct. 06, 2010) p. 673

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. (Financial Building Corp. *vs*. Rudlin Int'l. Corp., G.R. No. 164186, Oct. 04, 2010) p. 327

OMBUDSMAN

Final and executory decision of — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable; in all other cases, the decision may be appealed to the Court of Appeals under Rule 43 of the Rules of Court. (Office of the Ombudsman *vs*. Samaniego, G.R. No. 175573, Oct. 05, 2010) p. 445

Preventive suspension — Justified for charges of dishonesty and grave misconduct if evidence of respondent's guilt is found strong. (Office of the Ombudsman *vs.* Cordova, G.R. No. 188650, Oct. 6, 2010) p. 752

Rule-making powers — May be infringed by the issuance of a preliminary injunction that will stay the penalty imposed by the Ombudsman in an administrative case. (Office of the Ombudsman *vs*. Samaniego, G.R. No. 175573, Oct. 05, 2010) p. 455

PENAL LAWS

Application — Cannot be subjected to a facial challenge. (Southern Hemisphere Engagement Network, Inc. *vs*. Anti-Terrorism Council, G.R. No. 178552, Oct. 05, 2010) p. 452

— May only be assailed for being vague as applied to a particular defendant. *(Id.)*

PIERCING THE VEIL OF CORPORATE FICTION

Doctrine of — Does not cover a corporation not impleaded in a suit. (Kukan Int'l. Corp. *vs*. Judge Reyes, G.R. No. 182729, Sept. 29, 2010) p. 210

— Factors that will justify its application are: (1) a first corporation is dissolved; (2) the assets of the first corporation is transferred to a second corporation to avoid a financial liability of the first corporation; and (3) both corporations are owned and controlled by the same persons such that the second corporation should be considered as a continuation and successor of the first corporation. *(Id.)*

— It must be shown by clear and convincing proof that the separate and distinct personality of the corporation was purposefully employed to evade a legitimate and binding commitment and perpetrate a fraud or like wrongdoings. *(Id.)*

— Mere ownership by a single stockholder or by another corporation of a substantial block of shares of a corporation does not, standing alone provide sufficient justification for disregarding the separate corporate personality. *(Id.)*

PLEADINGS

Counterclaims — Test to determine whether a counterclaim is compulsory or not. (GSIS *vs*. Heirs of Fernando F. Caballero, G.R. No. 158090, Oct. 04, 2010) p. 314

Permissive counterclaim — For the trial court to acquire jurisdiction, the counterclaimant is bound to pay the prescribed docket fees. (GSIS *vs*. Heirs of Fernando F. Caballero, G.R. No. 158090, Oct. 04, 2010) p. 314

Service of pleadings — Must be received by one authorized to accept service. (Camper Realty Corp. *vs*. Pajo-Reyes, G.R. No. 179543, Oct. 06, 2010) p. 689

Verification — Liberal application of the rule on verification requires sufficient justification. (BPI *vs*. CA, G.R. No. 168313, Oct. 06, 2010) p. 617

PRELIMINARY INJUNCTION

Preliminary mandatory injunction — When the complainant's right is doubtful or disputed, he does not have a clear legal right, therefore, the issuance of a writ is improper.

(Sps. Ngo *vs*. Allied Banking Corp., G.R. No. 177420, Oct. 06, 2010) p. 681

Writ of — Discretion of the trial court to grant or deny a writ of preliminary injunction is respected in the absence of abuse of discretion. (Sps. Ngo *vs*. Allied Banking Corp., G.R. No. 177420, Oct. 06, 2010) p. 681

— May be issued upon the concurrence of the following essential requisites, to wit: (1) that the invasion of the right is material and substantial; (2) that the right of complainant is clear and unmistakable; and (3) that there is an urgent and paramount necessity for the writ to prevent serious damage. *(Id.)*

PRELIMINARY INVESTIGATION

Nature of — Merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged of a crime and to enable the prosecutor to prepare his complaint or information. (Atty. Odchigue-Bondoc *vs*. Tan Tiong Bio, G.R. No. 186652, Oct. 06, 2010) p. 743

Probable cause — Defined as such facts and circumstances that will engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial. (People *vs*. Mamaril, G.R. No. 171980, Oct. 06, 2010) p. 660

PRESIDENT

Power of general supervision — Distinguished from the power of control. (Province of Negros Occidental *vs*. Commissioners, COA, G.R. No. 182574, Sept. 28, 2010) p. 50

— Includes supervision over local government units. *(Id.)*

PRESUMPTIONS

Regularity in the performance of official duties — Stands absent ill-motive to falsely testify against the accused. (People *vs*. Mamaril, G.R. No. 171980, Oct. 06, 2010) p. 660

— Upheld as against the allegation of frame-up. *(Id.)*

PRE-TRIAL

Pre-trial conference — Determination of the issues at the pre-trial conference bars the consideration of other questions on appeal. (Calara *vs*. Francisco, G.R. No. 156439, Sept. 29, 2010) p. 122

PUBLIC OFFICERS AND EMPLOYEES

Administrative Circular No. 36-2001 — Requires all employees to register their daily attendance in the Chronology Time Recorder Machine (CTRM) and in the logbook of their respective offices. (*Re*: Failure of Various Employees to Register their Time of Arrival and/or Departure from Office in the Chronolog Machine, A.M. No. 2005-21-SC, Sept. 28, 2010) p. 18

Appointment to a public office — Acceptance by the appointee is the last act needed to make an appointment complete. (*Re*: Seniority among the Four [4] Most Recent Appointments to the Position of Associate Justices of the CA, A.M. No. 10-4-22-SC, Sept. 28, 2010; *Carpio, J., separate concurring opinion*) p. 1

— For purposes of completion of the appointment process, the appointment is complete when the commission is signed by the executive, and sealed if necessary, and is ready to be delivered or transmitted to the appointee. (*Re*: Seniority among the Four [4] Most Recent Appointments to the Position of Associate Justices of the CA, A.M. No. 10-4-22-SC, Sept. 28, 2010) p. 1

— The unequivocal act, of one who has the authority, of designating or selecting an individual to discharge and perform the duties and functions of an office or trust. (*Re*: Seniority among the Four [4] Most Recent Appointments to the Position of Associate Justices of the CA, A.M. No. 10-4-22-SC, Sept. 28, 2010) p. 1

Commission to public office — A written memorial that can render title to public office indubitable. (*Re*: Seniority among the Four [4] Most Recent Appointments to the

Position of Associate Justices of the CA, A.M. No. 10-4-22-SC, Sept. 28, 2010) p. 1

Dishonesty — Act of deliberately not registering in the Chronolog Time Record Machine to hide one's habitual tardiness is a case of dishonesty. (*Re*: Failure of Various Employees to Register their Time of Arrival and/or Departure from Office in the Chronolog Machine, A.M. No. 2005-21-SC, Sept. 28, 2010) p. 18

— Considered a grave offense punishable by dismissal even for the first offense. (*Re*: Complaint of the Civil Service Commission, Cordillera Administrative Region, Baguio City against Rita S. Chulyao, Clerk of Court, MCTC-Barlig, Mountain Province, A.M. No. P-07-2292, Sept. 28, 2010) p. 34

— Defined as intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion. *(Id.)*

— Implies a disposition to lie, cheat, deceive, or defraud; unworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. *(Id.)*

Violation of Civil Service Reasonable Rules and Regulations — Considered a light offense punishable with the penalty of reprimand for the first offense. (*Re*: Failure of Various Employees to Register their Time of Arrival and/or Departure from Office in the Chronolog Machine, A.M. No. 2005-21-SC, Sept. 28, 2010) p. 18

— Maintaining and using two (2) ID Cards is not a violation of reasonable office rules and regulations. *(Id.)*

QUALIFYING CIRCUMSTANCES

Minority and relationship as special qualifying circumstances — Both circumstances must concur to qualify the crime of rape. (People *vs*. Malana, G.R. No. 185716, Sept. 29, 2010) p. 290

RAPE

Commission of — Established when a man shall have carnal knowledge of a woman by means of force, threat or intimidation. (People *vs*. Malana, G.R. No. 185716, Sept. 29, 2010) p. 290

(People *vs*. Cabigquez, G.R. No. 185708, Sept. 29, 2010) p. 266

— Lust is no respecter of time and place and there is no rule that a woman can only be raped in seclusion. (People *vs*. Malana, G.R. No. 185716, Sept. 29, 2010) p. 290

— When done in the presence and in the full view of the victim's children, it qualifies the rape. (People *vs*. Cabigquez, G.R. No. 185708, Sept. 29, 2010) p. 266

Prosecution of rape cases — A daughter would not accuse her own father of a serious offense like rape had she not really been aggrieved. (People *vs*. Malana, G.R. No. 185716, Sept. 29, 2010) p. 290

— A positive DNA match may strengthen the evidence for the prosecution but an inconclusive DNA test result may not be sufficient to exculpate the accused particularly when there is sufficient evidence proving his guilt. (People *vs*. Cabigquez, G.R. No. 185708, Sept. 29, 2010) p. 266

— Guiding principles in the determination of the innocence or guilt of the accused. (People *vs*. Malana, G.R. No. 185716, Sept. 29, 2010) p. 290

— It is not unusual for a rape victim immediately following the sexual assault to conceal, at least momentarily, the incident. *(Id.)*

— No young Filipina would publicly admit that she had been criminally abused and ravished unless it is the truth. *(Id.)*

— Not impaired by the delay on the part of the victim in reporting the rape incidents. (People *vs*. Cabigquez, G.R. No. 185708, Sept. 29, 2010) p. 266

— Rape may be proven by the uncorroborated testimony of the offended victim, as long as her testimony is conclusive,

logical and probable. (People *vs*. Malana, G.R. No. 185716, Sept. 29, 2010) p. 290

— The victim cannot be faulted for failing to recognize the accused as her rapist though the latter was her neighbor. (People *vs*. Cabigquez, G.R. No. 185708, Sept. 29, 2010) p. 266

RES JUDICATA

Identity of causes of action — The tests to determine identity of causes of action are: (1) the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment, and (2) the "same evidence test" whereby the following question serves as a sufficient criterion: "would the same evidence support and establish both the present and former causes of action?" (Sps. Antonio *vs*. *Vda*. *de* Monje, G.R. No. 149624, Sept. 29, 2010) p. 90

Principle of — Defined as "a matter adjudged; a thing or matter settled by judgment." (Sps. Antonio *vs*. *Vda*. *de* Monje, G.R. No. 149624, Sept. 29, 2010) p. 90

Two concepts of — The first is "bar by prior judgment" under paragraph (b) of Rule 39, Section 47 of the Rules of Court, and the second is "conclusiveness of judgment" under paragraph (c) of Rule 39. (Sps. Antonio *vs*. *Vda*. *de* Monje, G.R. No. 149624, Sept. 29, 2010) p. 90

RULES OF COURT

Application — May be applied to cases in the Office of the Ombudsman; suppletorily only when the procedural matter is not governed by any specific provision in the Rules of Procedure of the Office of the Ombudsman. (Office of the Ombudsman *vs*. Samaniego, G.R. No. 175573, Oct. 05, 2010) p. 455

— The provisions of the Rules of Court cannot prevail over a special rule. *(Id.)*

SALES

Sale of real property by agent — Requires a written authority. (Camper Realty Corp. *vs*. Pajo-Reyes, G.R. No. 179543, Oct. 06, 2010) p. 689

SEAFARERS

Accident — May be employed as denoting a calamity, casualty, catastrophe, disorder, an undesirable or unfortunate happening, any unexpected personal injury resulting from any unlooked for mishap or occurrence; any unpleasant or unfortunate occurrence, that causes injury, loss, suffering or death; some untoward occurrence aside from the usual course of events. (NFD International Manning Agents, Inc./Barber Ship Management Ltd. *vs*. Illescas, G.R. No. 183054, Sept. 29, 2010) p. 244

— The snap on the back of a seafarer is not an accident, but an injury he sustained from carrying the heavy basketful of fire hydrant caps, which injury resulted in his disability. *(Id.)*

Rights of seafarers in case of injury or illness — Rule under the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean Going Vessels. (Varorient Shipping Co., Inc. *vs*. Flores, G.R. No. 161934, Oct. 06, 2010) p. 570

STATE, INHERENT POWERS OF

Police power — Police power legislation prevails not only over future contracts but even over those already in existence. (Surigao del Norte Electric Cooperative, Inc. *vs*. Energy Regulatory Board, G.R. No. 183626, Oct. 04, 2010) p. 402

— Validly exercised where the state regulates the rates imposed by a public utility. *(Id.)*

STATUTES

Doctrine of vagueness — A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess

at its meaning and differ as to its application. (Southern Hemisphere Engagement Network, Inc. *vs.* Anti-Terrorism Council, G.R. No. 178552, Oct. 05, 2010) p. 452

— Inapplicable as a ground to facially challenge a penal law. *(Id.)*

Overbreadth doctrine — Application thereof is limited to a facial kind of challenge to free speech claims. (Southern Hemisphere Engagement Network, Inc. *vs.* Anti-Terrorism Council, G.R. No. 178552, Oct. 05, 2010) p. 452

— As distinguished from the void for vagueness doctrine, it assumes that individuals will understand what a statute prohibits and will accordingly refrain from that behavior, even though some of it is protected. *(Id.)*

— Decrees that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms. *(Id.)*

— Inapplicable as a ground to facially challenge a penal law. *(Id.)*

STRIKES

Illegal strike — Established, although the labor union has complied with the strict requirements for staging one when the same is held contrary to an existing agreement, such as a no strike clause or conclusive arbitration clause. (C. Alcantara & Sons, Inc. *vs.* CA, G.R. No. 155109, Sept. 29, 2010) p. 105

— Union officers can, in accordance with law, be terminated from employment for their actions. *(Id.)*

SUMMARY PROCEDURE, RULES ON

Period to decide cases — Section 17 of the Rules requires the court to promulgate a judgment not later than thirty (30) days after termination of trial. (Raymundo *vs.* Judge Andoy, A.M. No. MTJ-09-1738, Oct. 06, 2010) p. 518

TAX REFUNDS

Claim for — Once the taxpayer exercises the option to carry-over and apply the excess creditable tax against the income tax due for the succeeding taxable years under Section 76 of the NIRC, such option is irrevocable. (Commissioner of Internal Revenue *vs*. Phil. American Life and General Ins., Co., G.R. No. 175124, Sept. 29, 2010) p. 161

Construction — A tax refund is in the nature of a tax exemption and the rule of strict interpretation against the taxpayer-claimant applies. (United Airlines, Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 178788, Sept. 29, 2010) p. 184

TAXES

Tax on resident foreign corporations — An international carrier that has ceased its flight operations to or from the Philippines is no longer taxable under Section 28 (A)(3)(a) at the rate of 2 1/2 % of its Gross Philippine Billings (GPB); carriers who no longer have flights to or from the Philippines but nonetheless earn income from other activities in the country shall be taxed at the rate of 32% of such income. (United Airlines, Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 178788, Sept. 29, 2010) p. 184

TRUSTS

Implied trust — A rule of equity, independent of the particular intention of the parties. (Sps. Paringit *vs*. Bajit, G.R. No. 181844, Sept. 29, 2010) p. 199

— Prescribes within 10 years from the time the right of action accrues. *(Id.)*

UNFAIR LABOR PRACTICES

Commission, not a case of — The call of the employer for a suspension of the collective bargaining agreement cannot be equated to "refusal to bargain" and therefore could not be considered as an unfair labor practice. (Manila Mining Corp. Employees Assn.-Federation of Free Workers Chapter *vs*. Manila Mining Corp. and/or Artemio F. Disini, G.R. Nos. 178222-23, Sept. 29, 2010) p. 169

Requisite to prosper — For a charge of unfair labor practice to prosper, it must be shown that the employer was motivated by ill-will, bad faith or fraud or was oppressive to labor. (Manila Mining Corp. Employees Assn.-Federation of Free Workers Chapter *vs*. Manila Mining Corp. and/or Artemio F. Disini, G.R. Nos. 178222-23, Sept. 29, 2010) p. 169

UNLAWFUL DETAINER

Action for — Requisite for valid cause of action are (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment. (Romullo *vs*. Samahang Magkakapitbahay ng Bayanihan Compound Homeowners Assn., Inc., G.R. No. 180687, Oct. 06, 2010) p. 699

Complaint for — Jurisdiction is determined by the allegations pleaded in the complaint. (Romullo *vs*. Samahang Magkakapitbahay ng Bayanihan Compound Homeowners Assn., Inc., G.R. No. 180687, Oct. 06, 2010) p. 699

*Judgment in an unlawful detainer c*ase — Failure of defendant to file superdeas bond does not prejudice the appeal otherwise perfected in the premises. (Calara *vs*. Francisco, G.R. No. 156439, Sept. 29, 2010) p. 122

Proceedings — Rule on who may institute proceedings and when, cited. (Romullo *vs*. Samahang Magkakapitbahay ng Bayanihan Compound Homeowners Assn., Inc., G.R. No. 180687, Oct. 06, 2010) p. 699

VALUE-ADDED TAX

Tax refund or issuance of tax credit certificate for unutilized input VAT — Filing of judicial claim before the Court of Tax Appeals is considered premature where the taxpayer

failed to wait for the decision of the Commissioner of Internal Revenue on his application for tax refund/claim or the lapse of the 120-day period. (Commissioner of Internal Revenue *vs*. Aichi Forging Co. of Asia, Inc., G.R. No. 184823, Oct. 06, 2010) p. 710

— Premature filing of judicial claim for tax refund/claim warrants a dismissal inasmuch as no jurisdiction was acquired by the Court of Tax Appeals. *(Id.)*

— Two–year prescriptive period should be reckoned from the close of the taxable quarter when the sales were made. *(Id.)*

WITNESSES

Credibility of —Protestation of good faith and inadvertence are too incredible to be given weight. (*Re*: Complaint of the Civil Service Commission, Cordillera Administrative Region, Baguio City against Rita S. Chulyao, Clerk of Court, MCTC-Barlig, Mountain Province, A.M. No. P-07-2292, Sept. 28, 2010) p. 34

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