
# PHILIPPINE REPORTS

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**VOLUME 647**

# REPORTS OF CASES

DETERMINED IN THE

# SUPREME COURT

OF THE

# PHILIPPINES

FROM

OCTOBER 11, 2010 TO OCTOBER 18, 2010

SUPREME COURT
MANILA
2014

*Prepared*
*by*

The Office of the Reporter
Supreme Court
Manila
2014


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# REPORT OF CASES

**DETERMINED IN THE**

## SUPREME COURT OF THE PHILIPPINES

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**THIRD DIVISION**

[G.R. No. 156038. October 11, 2010]

**SPOUSES VICTORIANO CHUNG and DEBBIE CHUNG,** *petitioners, vs.* **ULANDAY CONSTRUCTION, INC.,** [*] *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* THE SUPREME COURT IS NOT A TRIER OF FACTS; CASE AT BAR AN EXCEPTION.**— This Court is not a trier of facts. However, when the inference drawn by the CA from the facts is manifestly mistaken, as in the present case, we can review the evidence to allow us to arrive at the correct factual conclusions based on the record.

**2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; PARTIES' AGREEMENT IS THE LAW BETWEEN THEM AND MUST BE COMPLIED WITH IN GOOD FAITH.**— In contractual relations, the law allows the parties leeway and considers their agreement as the law between them. Contract stipulations that are not contrary to law, morals, good customs, public order or public policy shall be binding and should be complied with in good faith. No party is permitted to change his mind or disavow and go back upon his own acts, or to proceed contrary thereto, to the prejudice of the other party.

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[*] Known as "Ulanday Constructors, Inc." and "Ulanday Contractors, Inc." in other parts of the record.

In the present case, we find that both parties failed to comply strictly with their contractual stipulations on the progress billings and change orders that caused the delays in the completion of the project.

**3. ID.; ID.; ID.; CONTRACT FOR A PIECE OF WORK; LIABILITY OF THE PETITIONER FOR THE BALANCE OF THE TOTAL CONTRACT PRICE IS UNSUPPORTED BY EVIDENCE. —** There is no dispute that the petitioners failed to pay progress billings nos. 8 to 12. However, we find no basis to hold the petitioners liable for ₱629,819.84, the balance of the total contract price, without deducting the discount of ₱18,000.00 granted by the respondent. The petitioners likewise cannot be held liable for the balance of the total contract price because that amount is clearly unsupported by the evidence; only ₱545,922.13 is actually supported by progress billings nos. 8 to 12. Deducting the respondent's ₱100,000.00 cash advance, the unpaid progress billings amount to only ₱445,922.13.

**4. ID.; ID.; ID.; ID.; RECOVERY OF ADDITIONAL COSTS DUE TO CHANGES IN WORK, TWO REQUISITES; ABSENCE OF ONE OR THE OTHER CONDITION BARS THE RECOVERY OF ADDITIONAL COSTS; APPLIED TO CASE AT BAR.—** The CA erred in ruling that Article 1724 of the Civil Code does not apply because the provision pertains to disputes arising from the higher cost of labor and materials and there was no demand for increase in the costs of labor and materials. Article 1724 governs the recovery of additional costs in contracts for a stipulated price (such as fixed lump-sum contracts), and the increase in price for additional work due to change in plans and specifications. Such added cost can only be allowed upon the: (a) written authority from the developer or project owner ordering or allowing the written changes in work, and (b) written agreement of parties with regard to the increase in price or cost due to the change in work or design modification. Compliance with these two requisites is a condition precedent for the recovery. The absence of one or the other condition bars the recovery of additional costs. Neither the authority for the changes made nor the additional price to be paid therefor may be proved by any other evidence. In the present case, Article I, paragraph 6, of the Contract incorporates this provision xxx. Significantly, the respondent did not secure the required written

approval of the petitioners before making the changes in the plans, specifications and works. Thus, for undertaking change orders without the stipulated written approval of the petitioners, the respondent cannot claim the additional costs it incurred, save for the change orders the petitioners accepted and paid for.

**5. ID.; ID.; ID.; ID.; ID.; REQUIREMENT FOR THE PROJECT OWNER'S PRIOR WRITTEN CONSENT TO ANY CHANGE IN THE WORK IS DEEMED WRITTEN IN THE CONTRACT BETWEEN THE PARTIES; PRINCIPLE OF ESTOPPEL *IN PAIS* INAPPLICABLE.**— The petitioners' payment of Change Order Nos. 1, 16, and 17 and their non-objection to the other change orders effected by the respondent cannot give rise to estoppel *in pais* that would render the petitioners liable for the payment of all change orders. Estoppel *in pais,* or equitable estoppel, arises when one, by his acts, representations or admissions or by his silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and the other rightfully relies and acts on such beliefs so that he will be prejudiced if the former is permitted to deny the existence of such facts. The real office of the equitable norm of estoppel is limited to supplying deficiency in the law, but it should not supplant positive law. In this case, the requirement for the petitioners' written consent to any change or alteration in the specifications, plans and works is explicit in Article 1724 of the Civil Code and is deemed written in the contract between the parties. The contract also expressly provides that a mere act of tolerance does not constitute approval. Thus, the petitioners did not, by accepting and paying for Change Order Nos. 1, 16, and 17, do away with the contractual term on change orders nor with the application of Article 1724. The payments for Change Order Nos. 1, 16, and 17 are, at best, acts of tolerance on the petitioners' part that could not modify the contract. Consistent with this ruling, the petitioners are still liable for the ₱130,000.00 balance on Change Order Nos. 16 and 17 that, to date, remain unpaid. Accordingly, the petitioners' outstanding liabilities amount to ₱445,922.13 for the unpaid progress billings and ₱130,000.00 for the ratified change orders, or a total of ₱575,922.13.

**6. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES AND**

**ATTORNEY'S FEES; REQUISITE FOR THE GRANT THEREOF; AWARD OF EXEMPLARY DAMAGES AND ATTORNEY'S FEES, UNWARRANTED.—** We cannot allow the award for exemplary damages and attorney's fees. It is a requisite in the grant of exemplary damages that the act of the offender must be accompanied by bad faith or done in a wanton, fraudulent, or malevolent manner. On the other hand, attorney's fees may be awarded only when a party is compelled to litigate or to incur expenses to protect his interest by reason of an unjustified act of the other party, as when the defendant acted in gross and evident bad faith in refusing the plaintiff's plainly valid, just and demandable claim. We do not see the presence of these circumstances in the present case. [T]he petitioners' refusal to pay the change orders was based on a valid ground – lack of their prior written approval. There, too, is the matter of defective construction xxx.

**7. ID.; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; EXTINGUISHMENT OF OBLIGATIONS; COMPENSATION; PARTIAL LEGAL COMPENSATION, PROPER**.— We cannot sustain the lower courts' order to repair the defective concrete gutter. The considerable lapse of time between the filing of the complaint in May 1996 and the final resolution of the present case renders the order to repair at this time highly impractical, if not manifestly absurd. Besides, under the contract, the respondent's repair of construction defects, at its expense, pertains to the 12-month warranty period after the petitioners' issuance of the final acceptance of work. This provision does not apply since the petitioners have not even issued a certificate of completion and final acceptance of work. Under the circumstances, fairness and reason dictate that we simply order the set-off of the petitioners' contractual liabilities totaling ₱575,922.13 against the repair cost for the defective gutter, pegged at ₱717,524.00, leaving the amount of ₱141,601.87 still due from the respondent. Support in law for this ruling for partial legal compensation proceeds from Articles 1278, 1279, 1281, and 1283 of the Civil Code. In short, both parties are creditors and debtors of each other, although in different amounts that are already due and demandable.

**8. ID.; DAMAGES; INTEREST; LEGAL INTEREST OF 6% PER ANNUM, IMPOSED.—** Pursuant to our definitive ruling in

*Eastern Shipping Lines, Inc. v. Court of Appeals*, we hold that the amount of ₱141,601.87 is subject to the legal interest of 6% per annum computed from the time the RTC rendered judgment on December 11, 1997 since it was the respondent who filed the complaint. After the finality of this decision, the judgment award inclusive of interest shall bear interest at 12% per annum until full satisfaction.

**APPEARANCES OF COUNSEL**

*J.P. Villanueva & Associates* for petitioners.
*Rodolfo R. Marquez* for respondent.

**D E C I S I O N**

**BRION, *J.*:**

We resolve the petition for review on *certiorari*[1] filed by petitioners Spouses Victoriano Chung and Debbie Chung (*petitioners*) to challenge the decision[2] and resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 61583.[4]

**FACTUAL BACKGROUND**

The facts of the case, gathered from the records, are briefly summarized below.

In February 1985, the petitioners contracted with respondent Ulanday Construction, Inc. (*respondent*) to construct, within a 150-day period,[5] the concrete structural shell of the former's two-storey residential house in Urdaneta Village, Makati City

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[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 9-67.

[2] Dated June 28, 2002; penned by Associate Justice Andres B. Reyes, Jr., with the concurrence of Associate Justices Josefina Guevara-Salonga and Mario L. Guariña III; *id.* at 69-88.

[3] Dated November 22, 2002, *id.* at 90-93.

[4] Entitled "*Ulanday Construction, Inc. v. Sps. Victoriano Chung and Debbie Chung*."

[5] Article VI of the Contract, Exhibit "A", Folder of Plaintiff's Exhibits, p. 6.

at the contract price of ₱3,291,142.00.[6]

The Contract[7] provided that: (a) the respondent shall supply all the necessary materials, labor, and equipment indispensable for the completion of the project, except for work to be done by other contractors;[8] (b) the petitioners shall pay a ₱987,342.60[9] downpayment, with the balance to be paid in progress payments based on actual work completed;[10] (c) the Construction Manager or Architect shall check the respondent's request for progress payment and endorse it to the petitioners for payment within 3 days from receipt;[11] (d) the petitioners shall pay the respondents within 7 days from receipt of the Construction Manager's or Architect's certificate; (e) the respondent cannot change or alter the plans, specifications, and works without the petitioners' prior written approval;[12] (f) a penalty equal to 0.01% of the contract amount shall be imposed for each day of delay in completion, but the respondent shall be granted proportionate time extension for delays caused by the petitioners;[13] (g) the respondent shall correct, at its expense, defects appearing during the 12-month warranty period after the petitioners' issuance of final acceptance of work.[14]

Subsequently, the parties agreed to exclude from the contract the roofing and flushing work, for ₱321,338.00,[15] reducing the

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[6] Article III of the Contract, Exhibit "A", *id.* at 2-4.

[7] Exhibit "A", *id.* at 1-11.

[8] The exempted works were electrical works and fixtures, plumbing works equipment and fixtures, landscaping and site development, sanitary dump and deepwell, and interior and exterior architectural finishes; Article II of the Contract, Exhibit "A", *id.* at 2.

[9] Article V, paragraph A, of the Contract, Exhibit "A", *id.* at 5.

[10] Article V, paragraph B, of the Contract, Exhibit "A", *ibid.*

[11] *Ibid.*

[12] Article I, paragraph 6, of the Contract, Exhibit "A", *id.* at 2.

[13] Article V, paragraph D, of the Contract, Exhibit "A", *id.* at 5.

[14] Article IX, paragraph C, of the Contract, Exhibit "A", *id.* at 7.

[15] Erroneously printed as ₱321,388.00, Exhibit "A", *id.* at 4.

contract price to ₱2,969,804.00. On March 17, 1995, the petitioners paid the ₱987,342.60 downpayment,[16] with the balance of ₱1,982,461.40 to be paid based on the progress billings. While the building permit was issued on April 10, 1995,[17] actual construction started on March 7, 1995.[18]

As the actual construction went on, the respondent submitted 12 progress billings.[19] While the petitioners settled the first 7 progress billings, amounting to ₱1,270,641.59,[20] payment was made beyond the seven (7)-day period provided in the contract. The petitioner subsequently granted the respondent a ₱100,000.00 cash advance,[21] leaving the unpaid progress billings at

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[16] Exhibit "104", Folder of Defendants' Exhibits, p. 246.

[17] Exhibit "86", *id.* at 214.

[18] Affidavit by way of Direct Testimony of Defendant Debbie Chung, Original Records, p. 584.

[19]

| Progress billing no. | Date | Amount | Amount Approved |
|---|---|---|---|
| 1 | May 31 1995 | ₱448,512.06 | ₱342,976.63 |
| 2 | June 26, 1995 | | ₱466,747.64 |
| 3 | July 10, 1995 | ₱236,843.50 | ₱187,180.50 |
| 4 | July 26, 1995 | ₱219,437.99 | ₱170,278.44 |
| 5 | August 16, 1995 | ₱160,779.45 | ₱108,445.91 |
| 6 | August 31, 1995 | ₱110,128.93 | ₱66,518.18 |
| 7 | September 18, 1995 | ₱209,073.81 | ₱88,157.70 |
| 8 | October 14, 1995 | ₱ 33,516.25 | ₱36,481.42 |
| 9 | November 4, 1995 | ₱216,419.11 | ₱126,628.27 |
| 10 | November 27, 1995 | ₱72,547.23 | ₱68,350.51 |
| 11 | December 11, 1995 | ₱187,268.12 | ₱62,316.13 |
| 12 | December 27, 1995 | ₱252,145.80 | |

(Exhibit "LL", Folder of Plaintiff's Exhibits, p. 81).

[20] The petitioners paid progress billing nos. 1 and 2 for ₱695,275.00 on June 11, 1995; progress billing no. 3 for ₱186,461.29 on August 8, 1995; progress billing nos. 4 and 5 for ₱208,038.21 on September 11, 1995; progress billing no. 6 for ₱92,781.00 on October 3, 1995; and, progress billing no. 7 for ₱88,086.09 on October 31, 1995 (Exhibit "LL", *ibid.*).

[21] Exhibit "C-3", *id.* at 20.

₱445,922.13.[22]

During the construction, the respondent also effected 19 change orders without the petitioners' prior written approval, amounting to ₱912,885.91.[23] The petitioners, however, paid ₱42,298.61 for Change Order No. 1[24] and *partially* paid ₱130,000.00 for Change Order Nos. 16 and 17.[25] Petitioner

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[22] *Supra* note 19.

[23]

| | |
|---|---|
| **Change Order No. 1 (construction of room warehouse)** | **₱42,298.61** |
| Change Order No. 3 (rehabilitation of trusses and rear portion) | 57,866.00 |
| Change Order No. 4 (Installation of purlins) | 29,764.00 |
| Change Order No. 6 (reinforcement of truss at rear portion) | 10,000.00 |
| Change Order No. 8 (breaking of slab) | 10,560.00 |
| Change Order No. 12 (additional wall footing) | 14,000.00 |
| Change Order No. 13 (additional canopy at service) | 30,000.00 |
| Change Order No. 15 (ceiling eaves) | 190,731.00 |
| **Change Order No. 16 (wood battens)** | **60, 000.00** |
| **Change Order No. 17 (structural reinforcement)** | **200,000.00** |
| Change Order No. 18 (additional angle bar) | 14,000.00 |
| Change Order No. 19 (stair revision) | 13,000.00 |
| Change Order No. 21 (revision of porch) | 7,055.65 |
| Change Order No. 24 (false column and additional groove) | 41,498.00 |
| Change Order No. 25 (additional footing and column at entrance) | 33,664.00 |
| Change Order No. 26 (additional laundry tub at service) | 6,949.10 |
| Change Order No. 27 (additional slab on fill at garage and service) | 93,685.00 |
| Change Order No. 28 (revision of window sill) | 49,091.00 |
| Change Order No. 29 (additional burdillo at bridgeway and stairs) | 8,723.55 |
| Total | ₱912,885.91 |

(Exhibits "G" to "X", *id.* at 30-31, 41-50, 54-56, 59-62)

[24] The petitioners paid Change Order No. 1; Exhibit "Q-1", *id.* at 51.

[25] The petitioner partially paid Change Order Nos. 16 and 17 on September 11, 1995; Exhibits "N" and "O-1", *id.* at 46 and 48.

Debbie Chung acknowledged in writing that the balance for Change Order Nos. 16 and 17 would be paid upon completion of the contract.[26] The outstanding balance on the change orders totaled ₱740,587.30.

On July 4, 1995, the respondent notified the petitioners that the delay in the payment of progress billings delays the accomplishment of the contract work.[27] The respondent made similar follow-up letters between July 1995 to February 1996.[28] On March 28, 1996, the respondent demanded full payment for progress billings and change orders.[29] On April 8, 1996, the respondent demanded payment of ₱1,310,670.56 as outstanding balance on progress billings and change orders.[30]

In a letter dated April 16, 1996, the petitioners denied liability, asserting that the respondent violated the contract provisions by, among others, failing to finish the contract within the 150-day stipulated period, failing to comply with the provisions on change orders, and overstating its billings.[31]

On May 8, 1996, the respondent filed a complaint with the Regional Trial Court (*RTC*), Branch 145, Makati City, for collection of the unpaid balance of the contract and the unpaid change orders, plus damages and attorney's fees.[32]

In their answer with counterclaim,[33] the petitioners complained of the respondent's delayed and defective work. They demanded payment of liquidated damages for delay in the completion, the construction errors, loss or non-usage of specified construction materials, unconstructed and non-completed works, plus damages

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[26] Exhibits "N" and "O-1", *ibid.*

[27] Exhibit "Y", *id.* at 63.

[28] Exhibits "Z" to "FF", *id.* at 64-70.

[29] Exhibit "HH", *id.* at 72.

[30] Exhibit "JJ", *id.* at 74.

[31] Exhibit "JJ-1", *id.* at 76-78.

[32] Original Records, pp. 1-7.

[33] *Id.*, pp. 44-57.

and attorney's fees.

**THE RTC RULING**

In a decision[34] dated December 11, 1997, the RTC found that both parties have not complied strictly with the requirements of the contract. It observed that change orders were made without the parties' prescribed written agreement, and that each party should bear their respective costs. It noted that the respondent could not demand from the petitioners the payment for change orders undertaken upon instruction of the project architect without the petitioners' written approval. Applying Article 1724 of the Civil Code, the RTC found that when the respondent performed the change orders without the petitioners' written agreement, it did so at its own risk and it could not compel the petitioners to pay.

The RTC noted that the petitioners were nonetheless liable for ₱130,000.00 under Change Order Nos. 16 and 17, because petitioner Debbie Chung ratified and acknowledged that such amount was still due upon completion. It also noted that the respondent should not be faulted or penalized for the delay in the completion of the contract within the 150-day period due to the petitioners' delay in the payment of the progress billings. It found, however, that the petitioners are liable for the construction defect on the roof leak traceable to the shallow concrete gutter.

Thus, the RTC ordered the respondent to repair, at its expense, the defective concrete gutter of the petitioners' house and to restore other affected structures according to the architectural plans and specifications. It likewise ordered the petitioners to pay the respondent ₱629,819.84 as unpaid balance on the progress billings and ₱130,000.00 as unpaid balance on the ratified change orders.

Both parties elevated the case to the CA by way of ordinary appeal under Rule 41 of the Rules of Court. The respondent averred that the RTC failed to consider evidence of the petitioners' bad faith in violating the contract, while the petitioners argued that the RTC should have quantified the cost of the repairs and simply ordered the respondent to reimburse the petitioners' expenses.

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[34] *Rollo,* pp. 115-125.

## THE CA RULING

The CA decided the appeal on June 28, 2002.[35] It found Article 1724 inapplicable because the provision pertains to disputes arising from the higher cost of labor and materials, while the respondent demands payment of change order billings and there was no demand for increase in the costs of labor and materials. Applying the principle of estoppel *in pais,* the appellate court noted that the petitioners impliedly consented or tacitly ratified the change orders by payment of several change order billings and their inaction or non-objection to the construction of the projects covered by the change orders.

Thus, the CA affirmed the RTC decision, but increased the payment on the unpaid balance of the change orders to ₱740,587.11. It likewise ordered the petitioners to pay 6% interest on the unpaid amounts from the day of formal demand and until the finality of the decision, and 12% interest after finality of the decision, plus ₱50,000.00 as exemplary damages.

Both parties filed motions for reconsideration. On November 15, 2002, the CA issued a resolution denying the petitioners' motion for reconsideration, but partially granting the respondent's motion for reconsideration by awarding it attorney's fees equal to 10% of the total award.[36]

Hence, the petitioners came to us through the present petition.

## THE PETITION

The petitioners insist that the CA should have quantified the cost of the repairs on the defective gutter and simply ordered the respondent to reimburse the petitioners' expenses because repairing the defective gutter requires the demolition of the existing cement gutter, the removal of the entire roofing and the dismantling of the second floor steel trusses; they are entitled to liquidated damages for the unjust delay in the completion of the construction within the 150-day contract period; the award of ₱629,819.84 for progress billings is unwarranted since only

[35] *Id.* at 69-88.

[36] *Id.* at 90-93.

₱545,920.00 is supported by the respondent's evidence; the respondent's construction errors should set-off or limit the petitioners' liability, if any; the CA misinterpreted Article 1724 of the Civil Code and misapplied the principle of estoppel *in pais* since the contract specifically provides the petitioners' prior written approval for change orders; the respondent is not entitled to exemplary damages and attorney's fees since the respondent was at fault for the defective gutter.

## THE CASE FOR THE RESPONDENT

The respondent submits that the petition is merely dilatory since it seeks to review the lower courts' factual findings and conclusions, and it raised no legal issue cognizable by this Court. [37]

## THE ISSUE

The core issue is whether the CA erred in: (a) affirming the RTC decision for payment of progress billings; (b) in increasing the amount due for change orders; and, (c) in awarding exemplary damages and attorney's fees to the respondent.

## OUR RULING

**We find the petition meritorious.**

This Court is not a trier of facts. However, when the inference drawn by the CA from the facts is manifestly mistaken, as in the present case, we can review the evidence to allow us to arrive at the correct factual conclusions based on the record.[38]

***Contract is the law between the parties***

In contractual relations, the law allows the parties leeway and considers their agreement as the law between them.[39]

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[37] *Id.* at 148-152.

[38] *Aguirre v. Heirs of Lucas Villanueva,* G.R. No. 169898, October 27, 2006, 505 SCRA 855, 860; *Heirs of Flores Restar v. Heirs of Dolores R. Cichon*, G.R. No. 161720, November 22, 2005, 475 SCRA 731, 739.

[39] CIVIL CODE, Art. 1159; *Norton Resources and Development Corporation v. All Asia Bank Corporation*, G.R. No. 162523, November 25, 2009, 605 SCRA 370, 380.

Contract stipulations that are not contrary to law, morals, good customs, public order or public policy shall be binding[40] and should be complied with in good faith.[41] No party is permitted to change his mind or disavow and go back upon his own acts, or to proceed contrary thereto, to the prejudice of the other party.[42] In the present case, we find that both parties failed to comply strictly with their contractual stipulations on the progress billings and change orders that caused the delays in the completion of the project.

***Amount awarded for unpaid progress billings is unsupported by evidence***

There is no dispute that the petitioners failed to pay progress billings nos. 8 to 12. However, we find no basis to hold the petitioners liable for ₱629,819.84, the balance of the total contract price, without deducting the discount of ₱18,000.00 granted by the respondent. The petitioners likewise cannot be held liable for the balance of the total contract price because that amount is clearly unsupported by the evidence; only ₱545,922.13[43] is actually supported by progress billings nos. 8 to 12. Deducting the respondent's ₱100,000.00 cash advance,[44] the unpaid progress billings amount to only ₱445,922.13.

***Article 1724 of the Civil Code applies***

The CA erred in ruling that Article 1724 of the Civil Code does not apply because the provision pertains to disputes arising

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[40] CIVIL CODE, Art. 1306; *National Power Corporation v. Premier Shipping Lines, Inc*. G.R. No. 179103, September 17, 2009, 600 SCRA 153, 176; *Meralco Industrial Engineering Services Corporation v. National Labor Relations Commission*, G.R. No. 145402, March 14, 2008, 548 SCRA 315, 334.

[41] CIVIL CODE, Art. 1159.

[42] *Liga v. Allegro Resources Corp.*, G.R. No. 175554, December 23, 2008, 575 SCRA 310, 320; *Department of Health v. HMTC Engineers' Company*, G.R. No. 146120, January 27, 2006, 480 SCRA 299, 311.

[43] Excluding the ₱100,000.00 case advance, *supra* notes 19 and 21.

[44] *Supra* note 21.

from the higher cost of labor and materials and there was no demand for increase in the costs of labor and materials.

Article 1724[45] governs the recovery of additional costs in contracts for a stipulated price (such as fixed lump-sum contracts), and the increase in price for additional work due to change in plans and specifications. Such added cost can only be allowed upon the: (a) written authority from the developer or project owner ordering or allowing the written changes in work, and (b) written agreement of parties with regard to the increase in price or cost due to the change in work or design modification. Compliance with these two requisites is a condition precedent for the recovery. The absence of one or the other condition bars the recovery of additional costs. Neither the authority for the changes made nor the additional price to be paid therefor may be proved by any other evidence.[46]

In the present case, Article I, paragraph 6, of the Contract incorporates this provision:

> The CONTRACTOR shall make no change or alteration in the plans, and specifications as well as in the works subject hereof without the prior written approval of the OWNER. A mere act of tolerance shall not constitute approval.[47]

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[45] ART. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

(1) Such change has been authorized by the proprietor in writing; and

(2) The additional price to be paid to the contractor has been determined in writing by both parties.

[46] *Titan-Ikeda Construction & Development Corporation v. Primetown Properties Group, Inc.*, G.R. No. 158768, February 12, 2008, 544 SCRA 466, 489-490; *Powton Conglomerate, Inc. v. Agcolicol*, 448 Phil. 643, 655 (2003).

[47] *Supra* note 12.

Significantly, the respondent did not secure the required written approval of the petitioners before making the changes in the plans, specifications and works. Thus, for undertaking change orders without the stipulated written approval of the petitioners, the respondent cannot claim the additional costs it incurred, save for the change orders the petitioners accepted and paid for as discussed below.

***CA misapplied the principle of estoppel in pais***

The petitioners' payment of Change Order Nos. 1, 16, and 17 and their non-objection to the other change orders effected by the respondent cannot give rise to estoppel *in pais* that would render the petitioners liable for the payment of all change orders.

Estoppel *in pais*, or equitable estoppel, arises when one, by his acts, representations or admissions or by his silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and the other rightfully relies and acts on such beliefs so that he will be prejudiced if the former is permitted to deny the existence of such facts.[48] The real office of the equitable norm of estoppel is limited to supplying deficiency in the law, but it should not supplant positive law.[49]

In this case, the requirement for the petitioners' written consent to any change or alteration in the specifications, plans and works is explicit in Article 1724 of the Civil Code and is deemed written in the contract between the parties.[50] The contract also expressly

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[48] *Soliman v. Pampanga Sugar Development Company (PASUDECO), Inc.*, G.R. No. 169589, June 16, 2009, 589 SCRA 236, 252.

[49] *Ibid.*

[50] See *Halagueña v. Philippine Airlines, Incorporated*, G.R. No. 172013, October 2, 2009, 602 SCRA 297, 313, citing *Pakistan International Airlines Corporation v. Ople*, G.R. No. 61594, September 28, 1990, 190 SCRA 90, 99; *National Steel Corporation v. RTC, Br. 2, Iligan City*, 364 Phil. 240, 257 (1999).

provides that a mere act of tolerance does not constitute approval. Thus, the petitioners did not, by accepting and paying for Change Order Nos. 1, 16, and 17, do away with the contractual term on change orders nor with the application of Article 1724. The payments for Change Order Nos. 1, 16, and 17 are, at best, acts of tolerance on the petitioners' part that could not modify the contract.

Consistent with this ruling, the petitioners are still liable for the ₱130,000.00 balance on Change Order Nos. 16 and 17 that, to date, remain unpaid.[51]

Accordingly, the petitioners' outstanding liabilities amount to ₱445,922.13 for the unpaid progress billings and ₱130,000.00 for the ratified change orders, or a total of ₱575,922.13.

***Award of exemplary damages and attorney's fees is unwarranted.***

We cannot allow the award for exemplary damages and attorney's fees. It is a requisite in the grant of exemplary damages that the act of the offender must be accompanied by bad faith or done in a wanton, fraudulent, or malevolent manner.[52] On the other hand, attorney's fees may be awarded only when a party is compelled to litigate or to incur expenses to protect his interest by reason of an unjustified act of the other party, as when the defendant acted in gross and evident bad faith in refusing the plaintiff's plainly valid, just and demandable claim.[53]

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[51] *Supra* note 25.

[52] *Tanay Recreation Center and Development Corp. v. Fausto*, G.R. No. 140182, April 12, 2005, 455 SCRA 436, 457.

[53] CIVIL CODE, ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(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;

We do not see the presence of these circumstances in the present case. As previously discussed, the petitioners' refusal to pay the change orders was based on a valid ground – lack of their prior written approval. There, too, is the matter of defective construction discussed below.

***Petitioners' liability is set-off by respondent's construction defect***

We cannot sustain the lower courts' order to repair the defective concrete gutter. The considerable lapse of time between the filing of the complaint in May 1996 and the final resolution of the present case renders the order to repair at this time highly impractical, if not manifestly absurd. Besides, under the contract, the respondent's repair of construction defects, at its expense, pertains to the 12-month warranty period after the petitioners' issuance of the final acceptance of work.[54] This provision does not apply since the petitioners have not even issued a certificate of completion and final acceptance of work.

Under the circumstances, fairness and reason dictate that we simply order the set-off of the petitioners' contractual liabilities totaling ₱575,922.13 against the repair cost for the defective

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(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 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.

[54] *Supra* note 14.

gutter, pegged at ₱717,524.00,[55] leaving the amount of ₱141,601.87 still due from the respondent. Support in law for this ruling for partial legal compensation proceeds from Articles 1278,[56] 1279,[57] 1281,[58] and 1283[59] of the Civil Code. In short, both parties are creditors and debtors of each other, although in different amounts that are already due and demandable.

***Monetary award is subject to legal interest***

Pursuant to our definitive ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[60] we hold that the amount of ₱141, 601.87

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[55] Exhibit "53", Folder of Defendants' Exhibits, p. 174.

[56] ART. 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other.

[57] 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.

[58] ART. 1281. Compensation may be total or partial. When the two debts are of the same amount, there is total compensation.

[59] ART. 1283. If one of the parties to a suit over an obligation has a claim for damages against the other, the former may set it off by proving his right to said damages and the amount thereof.

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

We held:

"2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from

is subject to the legal interest of 6% per annum computed from the time the RTC rendered judgment on December 11, 1997 since it was the respondent who filed the complaint.[61] After the finality of this decision, the judgment award inclusive of interest shall bear interest at 12% per annum until full satisfaction.

**WHEREFORE**, the petition is hereby *GRANTED*. The assailed decision and resolution of the Court of Appeals in CA-G.R. CV No. 61583 are *REVERSED* and *SET ASIDE*. The respondent is *ORDERED* to pay the petitioners ₱141,601.87 representing the balance of the repair costs for the defective gutter in the petitioners' house, with interest at 6% per annum to be computed from the date of the filing of the complaint until finality of this decision and 12% per annum thereafter until full payment.

No pronouncement as to costs.

**SO ORDERED**.

*Carpio Morales (Chairperson), Bersamin, Villarama, Jr.,* and *Sereno, JJ.,* concur.

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the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged."

[61] See *Crystal v. Bank of the Philippine Islands*, G.R. No. 180274, September 4, 2009, 598 SCRA 464, 471.

**THIRD DIVISION**

[G.R. No. 171685. October 11, 2010]

**LAND BANK OF THE PHILIPPINES,** *petitioner, vs.* **GLENN Y. ESCANDOR, GEROME Y. ESCANDOR, EMILIO D. ESCANDOR and VIOLETA YAP,** *respondents.*

## SYLLABUS

**1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) OF 1988 (R.A. NO. 6657); JUST COMPENSATION; DETERMINATION THEREOF IS A JUDICIAL FUNCTION VESTED IN THE REGIONAL TRIAL COURT ACTING AS A SPECIAL AGRARIAN COURT; THE DEPARTMENT OF AGRARIAN REFORM'S LAND VALUATION IS NOT FINAL AND CONCLUSIVE.—** It is settled that the determination of just compensation is a judicial function. The DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. In the exercise of their functions, the courts still have the final say on what the amount of just compensation will be. Although the DAR is vested with primary jurisdiction under the Comprehensive Agrarian Reform Law (CARL) of 1988 to determine in a preliminary manner the reasonable compensation for lands taken under the CARP, such determination is subject to challenge in the courts. The CARL vests in the RTCs, sitting as SACs, original and exclusive jurisdiction over all petitions for the determination of just compensation. This means that the RTCs do not exercise mere appellate jurisdiction over just compensation disputes. We have held that the jurisdiction of the RTCs is not any less "original and exclusive" because the question is first passed upon by the DAR. The proceedings before the RTC are not a continuation of the administrative determination. Indeed, although the law may provide that the decision of the DAR is final and unappealable, still a resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.

**2. ID.; ID.; ID.; DETERMINATION THEREOF, GUIDELINES; DECLARED MANDATORY; THE DEPARTMENT OF**

**AGRARIAN REFORM'S (DAR) FORMULA IN COMPUTING JUST COMPENSATION MUST BE STRICTLY OBSERVED.—** Since the subject lands were placed under land reform after the effectivity of R.A. No. 6657, it is said law which governs the valuation of lands for the purpose of awarding just compensation. Section 17 of R.A. No. 6657 provides the guideposts for the determination of just compensation: Sec. 17. *Determination of Just Compensation.* – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. In recognition of the DAR's rule-making power to carry out the object of R.A. No. 6657, the Court ruled in *Land Bank of the Philippines v. Sps. Banal* that the applicable formula in fixing just compensation was DAR AO No. 06, series of 1992, as amended by DAR AO No. 11, series of 1994, which was then the governing regulation applicable to compulsory acquisition of lands. xxx Subsequently, in *Land Bank of the Philippines v. Celada*, we held that the factors enumerated under Section 17 of R.A. No. 6657 had already been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657. Thus, the formula outlined in DAR AO No. 05, series of 1998 should be applied in computing just compensation x x x. In view of the foregoing rulings, we hold that both the SAC and the CA erred in not strictly observing the guidelines provided in Section 17 of RA No. 6657 and adopting DAR administrative orders implementing the same, specifically AO No. 5, series of 1998 which took effect on May 11, 1998 and thus already in force at the time of the filing of the complaints. And contrary to the stance of the CA, we held in *Land Bank of the Philippines v. Lim* that Section 17 of R.A. No. 6657 and DAR AO No. 6, series of 1992, are mandatory and *not mere guides* that the RTC may disregard. We have stressed that the special agrarian court cannot ignore, without violating the agrarian law, the formula provided by the DAR for the determination of just compensation. This Court thus

rejected the valuation fixed by the RTC because it failed to follow the DAR formula.

**3. ID.; ID.; ID.; FORMULA LAID DOWN IN DAR A.O. NO.5, SERIES OF 1998 CANNOT BE IGNORED IN FIXING JUST COMPENSATION; CASE AT BAR REMANDED TO THE SPECIAL AGRARIAN COURT FOR THE DETERMINATION OF JUST COMPENSATION.—** This Court recently reiterated in *Land Bank of the Philippines v. Barrido*: While the determination of just compensation is essentially a judicial function vested in the RTC acting as a Special Agrarian Court, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. **Special Agrarian Courts are not at liberty to disregard the formula laid down in DAR A.O. No. 5, series of 1998, because unless an administrative order is declared invalid, courts have no option but to apply it.** The courts cannot ignore, without violating the agrarian law, the formula provided by the DAR for the determination of just compensation. Conformably with the aforecited rulings, the instant case must be remanded to the SAC for the determination of just compensation in accordance with DAR AO No. 5, series of 1998, the latest DAR issuance on fixing just compensation.

**4. ID.; ID.; ID.; ABSENT DELAY IN THE PAYMENT, THE IMPOSITION OF INTEREST ON THE FINAL COMPENSATION CANNOT BE ALLOWED.—** On the matter of interest on the final compensation, we are unable to agree with the CA's position that it is automatically awarded in agrarian cases involving lands placed under CARP. As we held in *Land Bank of the Philippines v. Celada***:** Finally, there is no basis for the SAC's award of 12% interest per annum in favor of respondent. Although in some expropriation cases, the Court allowed the imposition of said interest, the same was in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance. In this case, **there is no delay that would justify the payment of interest since the just compensation due to respondent has been promptly and validly deposited in her name in cash and LBP bonds.** Neither is there factual or legal justification for the award of attorney's fees and costs of litigation in favor of respondent. Respondents are not entitled to interest on the final compensation considering that petitioner

promptly deposited the compensation for their lands after they rejected petitioner's initial valuation. Such deposit of cash and bonds in the name of the landowners was made in accordance with Sections 16 (e) and 18 of R.A. No. 6657.

**APPEARANCES OF COUNSEL**

*LBP Legal Department* for petitioner.
*Remie A. Calatrava* for respondents.

**D E C I S I O N**

**VILLARAMA, JR., *J.*:**

Challenged in this petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, are the Decision[1] dated September 23, 2004 and Resolution[2] dated February 10, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 79027. The CA had directed the Regional Trial Court (RTC) of Davao City, Branch 15, acting as Special Agrarian Court (SAC), to recompute the amount of just compensation due to respondents.

The facts are as follows:

Respondents Glenn and Gerome Y. Escandor are the registered owners of four parcels of agricultural land located in Tuban and Saliducon, Sta. Cruz, Davao del Sur while respondents Emilio Escandor and Violeta Yap are the registered owners of two parcels of agricultural land situated in Dalagbong and Bulacan in Malalag, Davao del Sur.[3]

In 1995, the Department of Agrarian Reform (DAR) placed the aforesaid lands under compulsory acquisition of the

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[1] *Rollo*, pp. 59-72. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Sesinando E. Villon and Rodrigo F. Lim, Jr.

[2] *Id.* at 75-76. Penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Normandie B. Pizarro and Ricardo R. Rosario.

[3] Records, pp. 295-301.

Comprehensive Agrarian Reform Program (CARP) pursuant to Republic Act (R.A.) No. 6657. Petitioner Land Bank of the Philippines (LBP) through its Land Valuation Office conducted a field investigation and came up with its valuations in the aggregate amount of ₱927,895.97 for the properties of Glenn and Gerome Y. Escandor, and ₱849,611.01 for the properties of Emilio Escandor and Violeta Yap.[4]

Since respondents rejected the LBP's valuation, the DAR instituted summary administrative proceedings for the determination of just compensation while petitioner deposited in the name of respondents the amount of compensation in cash and bonds.[5] In the meantime, respondents' titles were cancelled and emancipation patents were issued to farmer-beneficiaries. After due proceedings, the DAR sustained the valuation made by petitioner.

On October 8, 1998, respondents filed their respective complaints for determination and payment of just compensation against petitioner and the DAR before the RTC of Davao City, Branch 15, acting as SAC.[6] With the agreement of the parties, the cases were jointly tried. The trial court also ordered the parties to submit the names of their respective commissioners who submitted their reports.

On March 3, 2003, the RTC rendered its Decision,[7] the *fallo* of which reads:

WHEREFORE, judgment is hereby rendered as follows:

The Defendants shall pay:

Glenn and Gerome Escandor in Civil Case No. 26,832 the following sums:

TCT No. 19216 – 2.7918 hectares Two Hundred Fifty Thousand Pesos
TCT No.19217– 0.5887 hectares Forty Thousand Pesos

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[4] *Id.* at 169, 191, 197-199.

[5] *Id.* at 342, 353, 364, 375, 391 and 397.

[6] Docketed as SP. Civil Case No. 26,832-98 and SP. Civil Case No. 26,833-98.

[7] *Rollo*, pp. 154-161. Penned by Judge Jesus V. Quitain.

TCT No. 19218 – 3.7417 hectares Four Hundred Thousand Pesos
TCT No. 19219 – 14.178 hectares One Million Four Hundred Thousand Pesos

2. Violeta Yap and Emilio Escandor in Civil Case N[o]. 26,833

TCT No. 18903 – 13.7413 hectares One Million One Hundred Thousand Pesos
TCT No. 4093 – 8.8992 hectares One Million Four Hundred Thousand Pesos

3. Costs of Suits.

SO ORDERED.[8]

The SAC addressed the issue of whether just compensation should be based on the market value formula which respondents endorsed or the income value formula which the DAR used. All things being equal, according to the trial court, if the price is based mainly on the average yearly fruit/income product for five years immediately before the taking of the owner-farmer's yearly income then it depends principally on unpredictable weather and on widely volatile fluctuating prices of the farm products both of which are beyond the owner's capability to control and to foresee. Thus, the market value approach "gives the owner a better chance to survive because the money might be enough to tide him over until he regains his composure after losing his cherished farm and to start hopefully all over again even though he is already in [his] 50's or 60's and is already over the hill physically." The SAC thus justified the award of the higher amount of just compensation, stating that "fair and full equivalent of the losses sustained, all the facts of the property and its surroundings, its improvements and capabilities should be considered."[9]

A motion for reconsideration was filed by petitioner but the same was denied by the trial court in its Order dated August 1, 2003.[10]

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[8] *Id.* at 161.

[9] *Id.* at158, 160.

[10] *Id.* at 162.

Petitioner filed a petition for review before the CA arguing that the SAC gravely erred in fixing the just compensation for the properties of respondents in the aggregate amount of ₱4,590,000.00, in clear violation of the provisions of R.A. No. 6657 and its implementing regulations, particularly DAR Administrative Order (AO) No. 06, series of 1992, as amended by DAR AO No. 11, series of 1994.

On September 23, 2004, the CA rendered the assailed Decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, it is premature at this point to rule on the correctness of the special agrarian court's computation of just compensation. The special court is therefore DIRECTED to recompute the just compensation to reflect: 1) the value of the properties at the time of their taking; 2) the basis, formula and/or mathematical computation in arriving at the just compensation; and 3) the interest computed from the time the property is taken to the time when compensation is actually paid.
>
> Forthwith, let the records of this case be remanded to the special agrarian court for further proceedings.
>
> SO ORDERED.[11]

The CA held that Section 17 of R.A. No. 6657 does not limit the sole basis in computing just compensation to the income method nor does it foreclose the use of market value approach. The factors enumerated therein merely serve as a guideline for the court which is not precluded from considering all, some or only one of those factors in computing just compensation. While the LBP and the DAR may determine just compensation, such determination is merely preliminary and administrative, not binding or conclusive upon the agrarian court. The CA also declared that adopting the mathematical computation fixed by the Administrative Order would violate the landowner's right to due process. The landowner must be given the opportunity to prove the real value of his property and to disprove the valuation of the expropriating agency.[12]

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[11] *Id.* at 71.

[12] *Id.* at 93-96.

The CA further ruled that the computation of just compensation should be made at the time of the taking, which in this case should be in 1997 when the DAR took the lands and cancelled respondents' titles thereto. Hence, there is a need to recompute the amount of just compensation using as basis the value of the lands in 1997 and reflecting the formula in arriving at the valuation. Lastly, though not mentioned in the SAC decision nor raised in the petition, the CA stated that the final compensation must include interest "to temper the prejudice caused to the landowner on account of the delay in his payment."[13]

Petitioner filed a motion for reconsideration[14] of the aforesaid Decision. In a Resolution dated February 10, 2006, the CA denied the motion.

Hence, this petition anchored on the following grounds:

A. THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN ORDERING THE REMAND OF THE CASE TO THE SPECIAL AGRARIAN COURT WITHOUT THE CORRESPONDING INSTRUCTION TO COMPUTE THE JUST COMPENSATION IN ACCORDANCE WITH THE VALUATION FACTORS UNDER SECTION 17 OF R.A. 6657 AS TRANSLATED INTO A BASIC FORMULA IN DAR ADMINISTRATIVE ORDER NO. 6, SERIES OF 1992, AND AS HELD IN THE CASE OF *SPS. BANAL*, G.R. NO. 143276 (JULY 20, 2004).

B. THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN ORDERING THE PAYMENT OF INTEREST CONSIDERING THAT THE MODE OF COMPENSATION IN AGRARIAN REFORM IS CLEARLY PRESCRIBED UNDER SECTION 18 OF R.A. 6657.[15]

Petitioner contends that the basis of valuation for the determination of just compensation is provided in Section 17 of R.A. No. 6657 and DAR AO No. 06, series of 1992. Unless

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[13] *Id.* at 96-98.

[14] *Id.* at 104-116.

[15] *Id.* at 40.

they are declared unconstitutional or invalid, petitioner submits that the SAC has no other option but to apply the said laws.

On the other hand, respondents maintain that in eminent domain cases, the power to determine the amount of just compensation is a judicial function. They stress that a reading of Section 17 of R.A. No. 6657 will show that the current market value of the properties expropriated are among the factors to be considered in determining the amount of just compensation. Thus, respondents maintain that the CA did not commit error in remanding the case to the SAC and directing the computation of the market value of respondents' properties at the time they were expropriated in 1997.

We grant the petition.

It is settled that the determination of just compensation is a judicial function.[16] The DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. In the exercise of their functions, the courts still have the final say on what the amount of just compensation will be.[17]

Although the DAR is vested with primary jurisdiction under the Comprehensive Agrarian Reform Law (CARL) of 1988 to determine in a preliminary manner the reasonable compensation for lands taken under the CARP, such determination is subject to challenge in the courts.[18] The CARL vests in the RTCs, sitting as SACs, original and exclusive jurisdiction over all petitions for the determination of just compensation.[19] This means that

[16] *Land Bank of the Philippines v. J.L. Jocson and Sons*, G.R. No. 180803, October 23, 2009, 604 SCRA 373, 382; *Land Bank of the Philippines v. Kumassie Plantation Company, Incorporated*, G.R. Nos. 177404 and 178097, June 25, 2009, 591 SCRA 1, 11; *National Power Corporation v. Bongbong*, G.R. No. 164079, April 3, 2007, 520 SCRA 290, 307; *Land Bank of the Philippines v. Natividad*, G.R. No. 127198, May 16, 2005, 458 SCRA 441, 451.

[17] *Land Bank of the Philippines v. Dumlao*, G.R. No. 167809, November 27, 2008, 572 SCRA 108, 136.

[18] CARL, Section 50.

[19] *Id.*, Section 57.

the RTCs do not exercise mere appellate jurisdiction over just compensation disputes.[20]

We have held that the jurisdiction of the RTCs is not any less "original and exclusive" because the question is first passed upon by the DAR. The proceedings before the RTC are not a continuation of the administrative determination. Indeed, although the law may provide that the decision of the DAR is final and unappealable, still a resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.[21]

Since the subject lands were placed under land reform after the effectivity of R.A. No. 6657, it is said law which governs the valuation of lands for the purpose of awarding just compensation. Section 17 of R.A. No. 6657 provides the guideposts for the determination of just compensation:

> Sec. 17. *Determination of Just Compensation.* – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

In recognition of the DAR's rule-making power to carry out the object of R.A. No. 6657, the Court ruled in *Land Bank of the Philippines v. Sps. Banal*[22] that the applicable formula in fixing just compensation was DAR AO No. 06, series of 1992, as amended by DAR AO No. 11, series of 1994, which was

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[20] *Land Bank of the Philippines v. Fortune Savings and Loan Association, Inc.*, G.R. No. 177511, June 29, 2010, p. 4, citing *Philippine Veterans Bank v. Court of Appeals*, 379 Phil. 141, 148 (2000); see also *Republic of the Philippines v. CA,* 331 Phil. 1070, 1078 (1996).

[21] *Id.* at 5.

[22] 478 Phil. 701, 715 (2004).

then the governing regulation applicable to compulsory acquisition of lands. In the said case, the trial court based its valuation upon a different formula and did not conduct any hearing for the reception of evidence. Thus, the Court remanded the case to the SAC for trial on the merits.

Subsequently, in *Land Bank of the Philippines v. Celada*,[23] we held that the factors enumerated under Section 17 of R.A. No. 6657 had already been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657. Thus, the formula outlined in DAR AO No. 05, series of 1998[24] should be applied in computing just compensation, to wit:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

Likewise, in *Land Bank of the Philippines v. Lim*[25] and *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*,[26] the Court, reiterating the mandatory application of the aforementioned guidelines in determining just compensation, also ordered the remand of the cases to the SAC for the determination of just compensation strictly in accordance with the applicable DAR regulation.[27]

In view of the foregoing rulings, we hold that both the SAC and the CA erred in not strictly observing the guidelines provided

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[23] G.R. No. 164876, January 23, 2006, 479 SCRA 495, 507-508.

[24] REVISED RULES AND REGULATIONS GOVERNING THE VALUATION OF LANDS VOLUNTARILY OFFERED OR COMPULSORILY ACQUIRED PURSUANT TO REPUBLIC ACT NO. 6657.

[25] G.R. No. 171941, August 2, 2007, 529 SCRA 129, 142.

[26] G.R. No. 175175, September 29, 2008, 567 SCRA 31, 40, citing *Land Bank of the Philippines v. Lim, id.*

[27] *Land Bank of the Philippines v. Heirs of Honorato De Leon*, G.R. No. 164025, May 8, 2009, 587 SCRA 454, 463.

in Section 17 of RA No. 6657 and adopting DAR administrative orders implementing the same, specifically AO No. 5, series of 1998 which took effect on May 11, 1998 and thus already in force at the time of the filing of the complaints. And contrary to the stance of the CA, we held in *Land Bank of the Philippines v. Lim*[28] that Section 17 of R.A. No. 6657 and DAR AO No. 6, series of 1992, are mandatory and *not mere guides* that the RTC may disregard.[29] We have stressed that the special agrarian court cannot ignore, without violating the agrarian law, the formula provided by the DAR for the determination of just compensation. This Court thus rejected the valuation fixed by the RTC because it failed to follow the DAR formula.[30]

This Court recently reiterated in *Land Bank of the Philippines v. Barrido:*[31]

> While the determination of just compensation is essentially a judicial function vested in the RTC acting as a Special Agrarian Court, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. **Special Agrarian Courts are not at liberty to disregard the formula laid down in DAR A.O. No. 5, series of 1998, because unless an administrative order is declared invalid, courts have no option but to apply it.** The courts cannot ignore, without violating the agrarian law, the formula provided by the DAR for the determination of just compensation.

Conformably with the aforecited rulings, the instant case must be remanded to the SAC for the determination of just compensation in accordance with DAR AO No. 5, series of 1998, the latest DAR issuance on fixing just compensation.[32]

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[28] *Supra* note 25.

[29] *Land Bank of the Philippines v. Rufino,* G.R. Nos. 175644 & 175702, October 2, 2009, 602 SCRA 399, 407.

[30] *Allied Banking Corporation v. Land Bank of the Philippines,* G.R. No. 175422, March 13, 2009, 581 SCRA 301, 313, citing *LBP v. Celada, supra* note 23.

[31] G.R. No. 183688, August 18, 2010.

[32] *Land Bank of the Philippines v. Heirs of Honorato De Leon, supra* note 27.

On the matter of interest on the final compensation, we are unable to agree with the CA's position that it is automatically awarded in agrarian cases involving lands placed under CARP. As we held in *Land Bank of the Philippines v. Celada:*[33]

> Finally, there is no basis for the SAC's award of 12% interest per annum in favor of respondent. Although in some expropriation cases, the Court allowed the imposition of said interest, the same was in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance. In this case, **there is no delay that would justify the payment of interest since the just compensation due to respondent has been promptly and validly deposited in her name in cash and LBP bonds.** Neither is there factual or legal justification for the award of attorney's fees and costs of litigation in favor of respondent. (Emphasis supplied.)

Respondents are not entitled to interest on the final compensation considering that petitioner promptly deposited the compensation for their lands after they rejected petitioner's initial valuation. Such deposit of cash and bonds in the name of the landowners was made in accordance with Sections 16 (e) and 18 of R.A. No. 6657.[34]

**WHEREFORE,** the petition is *GRANTED.* The Decision dated September 23, 2004 and Resolution dated February 10, 2006 of the Court of Appeals in CA-G.R. SP No. 79027 are hereby *AFFIRMED with MODIFICATION* in that the Regional Trial Court, Branch 15, Davao City is specifically *DIRECTED* to determine just compensation in SP. Civil Case Nos. 26,832-98 and 26,833-98 strictly in accordance with Section 17 of R.A. No. 6657 and DAR Administrative Order No. 05, series of 1998.

No costs.

**SO ORDERED.**

*Carpio Morales, Brion, Bersamin,* and *Sereno, JJ.*, concur.

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[33] G.R. No. 164876, January 23, 2006, 479 SCRA 495, 512.

[34] See *Land Bank of the Philippines v. Court of Appeals,* 319 Phil. 246 (1995). Resolution denying LBP and DAR's motion for reconsideration was promulgated on July 5, 1996 (327 Phil. 1047).

**FIRST DIVISION**

[G.R. No. 177127. October 11, 2010]

**J.R.A. PHILIPPINES, INC.,** *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

## SYLLABUS

**TAXATION; VALUE ADDED TAX (VAT); FAILURE TO PRINT THE WORD "ZERO-RATED" ON THE INVOICES/RECEIPTS IS FATAL TO A CLAIM FOR CREDIT/REFUND OF INPUT VAT ON ZERO-RATED SALES.—** The question of whether the absence of the word "zero-rated" on the invoices/receipts is fatal to a claim for credit/refund of input VAT is not novel. This has been squarely resolved in *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue.* In that case, we sustained the denial of petitioner's claim for tax credit/refund for non-compliance with Section 4.108-1 of Revenue Regulations No. 7-95, which requires the word "zero rated" to be printed on the invoices/receipts covering zero-rated sales. We explained that: xxx Section 4.108-1 of RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1977 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. As aptly explained by the CTA's First Division, the appearance of the word "zero-rated" on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect. Further, the printing of the word "zero-rated" on the invoice helps segregate sales that are subject to 10% (now 12%) VAT from those sales that are zero-rated. xxx Consistent with the foregoing jurisprudence, petitioner's claim for credit/ refund of input VAT for the taxable quarters of 2000 must be denied. Failure to print the word "zero-rated" on the

invoices/receipts is fatal to a claim for credit/ refund of input VAT on zero-rated sales.

**APPEARANCES OF COUNSEL**

*Salvador & Associates* for petitioner.
*The Solicitor General* for respondent.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

*Stare decisis et non quieta movere.*

Courts are bound by prior decisions. Thus, once a case has been decided one way, courts have no choice but to resolve subsequent cases involving the same issue in the same manner.[1] We ruled then, as we rule now, that failure to print the word "zero-rated" in the invoices/receipts is fatal to a claim for credit/ refund of input value-added tax (VAT) on zero-rated sales.

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to set aside the January 15, 2007 Decision[2] and the March 16, 2007 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc*.

***Factual Antecedents***

Petitioner J.R.A. Philippines, Inc., a domestic corporation, is engaged in the manufacture and wholesale export of jackets,

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[1] *Agencia Exquisite of Bohol, Incorporated v. Commissioner of Internal Revenue*, G.R. Nos. 150141, 157359 and 158644, February 12, 2009, 578 SCRA 539, 550.

[2] *Rollo*, pp. 75-95; penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez. With Concurring and Dissenting Opinion of Presiding Justice Ernesto D. Acosta., *id.* at 96-112.

[3] *Id.* at 103-106; penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez. With Concurring and Dissenting Opinion of Presiding Justice Ernesto D. Acosta, *id.* at 107-112.

pants, trousers, overalls, shirts, polo shirts, ladies' wear, dresses and other wearing apparel.[4] It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer[5] and as an Ecozone Export Enterprise with the Philippine Economic Zone Authority (PEZA).[6]

On separate dates, petitioner filed with the Revenue District Office (RDO) No. 54 of the BIR, Trece Martires City, applications for tax credit/refund of unutilized input VAT on its zero-rated sales for the taxable quarters of 2000 in the total amount of ₱8,228,276.34, broken down as follows:

| | |
|---|---|
| 1st quarter | ₱2,369,060.97 |
| 2nd quarter | 2,528,126.02 |
| 3rd quarter | 1,918,015.38 |
| 4th quarter | 1,413,073.97[7] |

The claim for credit/refund, however, remained unacted by the respondent. Hence, petitioner was constrained to file a petition before the CTA.

***Proceedings before the Second Division of the Court of Tax Appeals***

On April 16, 2002, petitioner filed a Petition for Review[8] with the CTA for the refund/credit of the same input VAT which was docketed as CTA Case No. 6454 and raffled to the Second Division of the CTA.

In his Answer,[9] respondent interposed the following special and affirmative defenses, to wit:

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. Being allegedly registered with the Philippine Economic Zone Authority as an export enterprise, petitioner's business is not subject

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

[5] *Id.* at 114.

[6] *Id.*

[7] *Id.* at 21-22.

[8] *Id.* at 113-118.

[9] *Id.* at 119-121.

to VAT pursuant to Section 24 of R.A. No. 7916 in relation to Section 109 (q) of the Tax Code. Hence, it is not entitled to tax credit of input taxes pursuant to Section 4.103-1 of Revenue Regulations No. 7-95;

6. The amount of ₱8,228,276.34 being claimed by petitioner as alleged unutilized VAT input taxes for the year 2000 was not properly documented;

7. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to [do so] is fatal to the claim for refund/credit;

8. Petitioner must show that it has complied with the provisions of Section 204 (c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.[10]

After trial, the Second Division of the CTA rendered a Decision[11] denying petitioner's claim for refund/credit of input VAT attributable to its zero-rated sales due to the failure of petitioner to indicate its Taxpayer's Identification Number-VAT (TIN-V) and the word "zero-rated" on its invoices.[12] Thus, the *fallo* reads:

WHEREFORE**,** premises considered, the instant petition is hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.[13]

Aggrieved by the Decision, petitioner filed a Motion for Reconsideration[14] to which respondent filed an Opposition.[15] Petitioner, in turn, tendered a Reply.[16]

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[10] *Id.* at 119-120.

[11] *Id.* at 152-169.

[12] *Id.* at 163-167.

[13] *Id.* at 169.

[14] *Id.* at 170-192.

[15] *Id.* at 193-199.

[16] *Id.* at 200-211.

The Second Division of the CTA, however, stood firm on its Decision and denied petitioner's Motion for lack of merit in a Resolution[17] dated October 5, 2005. This prompted petitioner to elevate the matter to the CTA *En Banc*.[18]

***Ruling of the CTA En Banc***

On January 15, 2007, the CTA *En Banc* denied the petition, reiterating that failure to comply with invoicing requirements results in the denial of a claim for refund.[19] Hence, it disposed of the petition as follows:

> WHEREFORE, the petition for review is **DENIED** for lack of merit. **ACCORDINGLY**, the Decision dated June 30, 2005 and Resolution dated October 5, 2005 of Second Division of the Court of Tax Appeals in C.T.A Case No. 6454 are hereby **AFFIRMED**.
>
> SO ORDERED.[20]

Presiding Justice Ernesto D. Acosta (Presiding Justice Acosta) concurred with the findings of the majority that there was failure on the part of petitioner to comply with the invoicing requirements;[21] he dissented, however, to the outright denial of petitioner's claim since there are other pieces of evidence proving petitioner's transactions and VAT status.[22]

Petitioner sought reconsideration[23] of the Decision but the CTA *En Banc* denied the same in a Resolution[24] dated March 16, 2007. Presiding Justice Acosta maintained his dissent.

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[17] *Id.* at 213-214.

[18] *Id.* at 219-254.

[19] *Id.* at 93.

[20] *Id.* at 94.

[21] *Id.* at 96.

[22] *Id.* at 102.

[23] *Id.* at 324-345.

[24] *Id.* at 103-112.

**Issue**

Hence, the instant Petition with the solitary issue of whether the failure to print the word "zero-rated" on the invoices/receipts is fatal to a claim for credit/ refund of input VAT on zero-rated sales.

***Petitioner's Arguments***

Petitioner submits that:

THE COURT OF TAX APPEALS ERRED BY DECIDING QUESTIONS OF SUBSTANCE IN A MANNER THAT IS NOT IN ACCORD WITH LAW AND JURISPRUDENCE, IN THAT:

A. THE INVOICING REQUIREMENTS UNDER THE 1997 TAX CODE DO NOT REQUIRE THAT INVOICES AND/ OR RECEIPTS ISSUED BY A VAT-REGISTERED TAXPAYER, SUCH AS THE PETITIONER, SHOULD BE IMPRINTED WITH THE WORD "ZERO-RATED."

B. THE INVOICING REQUIREMENTS PRESCRIBED BY THE 1997 TAX CODE AND THE REQUIREMENT THAT THE WORDS "ZERO-RATED" BE IMPRINTED ON THE SALES INVOICES/OFFICIAL RECEIPTS UNDER REVENUE REGULATIONS NO. 7-95 ARE NOT EVIDENTIARY RULES AND THE ABSENCE THEREOF IS NOT FATAL TO A TAXPAYER'S CLAIM FOR REFUND.

C. RESPONDENT'S REGULATIONS ARE INVALID BECAUSE THEY DO NOT IMPLEMENT THE 1997 TAX CODE BUT INSTEAD, [EXCEED] THE LIMITATIONS OF THE LAW.

D. PETITIONER PRESENTED SUBSTANTIAL EVIDENCE THAT UNEQUIVOCALLY PROVED PETITIONER'S ZERO-RATED TRANSACTIONS FOR THE YEAR 2000.

E. NO PREJUDICE CAN RESULT TO THE GOVERNMENT BY REASON OF THE FAILURE OF PETITIONER TO IMPRINT THE WORD "ZERO-RATED" ON ITS INVOICES. PETITIONER'S CLIENTS FOR ITS ZERO-RATED TRANSACTIONS CANNOT UNDULY BENEFIT FROM ITS "OMISSION" CONSIDERING THAT THEY ARE NON-RESIDENT FOREIGN CORPORATIONS [THAT] ARE NOT COVERED BY THE PHILIPPINE VAT SYSTEM.

F. IN CIVIL CASE[S], SUCH AS CLAIMS FOR REFUND, STRICT COMPLIANCE WITH TECHNICAL RULES OF EVIDENCE IS NOT REQUIRED. MOREOVER, A MERE PREPONDERANCE OF EVIDENCE WILL SUFFICE TO JUSTIFY THE GRANT OF A CLAIM.[25]

***Respondent's Arguments***

Emphasizing that tax refunds are in the nature of tax exemptions which are strictly construed against the claimant, respondent seeks the affirmance of the assailed Decision and Resolution of the CTA *En Banc*.[26] He insists that the denial of petitioner's claim for tax credit/refund is justified because it failed to comply with the invoicing requirements under Section 4.108-1[27] of Revenue Regulations No. 7-95.

**Our Ruling**

The petition is bereft of merit.

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[25] *Id.* at 22-23.

[26] *Id.* at 411.

[27] SECTION 4.108-1. Invoicing Requirements. – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word "zero rated" imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as a "VAT Invoice." All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

***The absence of the word "zero-rated" on the invoices/receipts is fatal to a claim for credit/refund of input VAT***

The question of whether the absence of the word "zero-rated" on the invoices/receipts is fatal to a claim for credit/refund of input VAT is not novel. This has been squarely resolved in *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue*.[28] In that case, we sustained the denial of petitioner's claim for tax credit/refund for non-compliance with Section 4.108-1 of Revenue Regulations No. 7-95, which requires the word "zero rated" to be printed on the invoices/receipts covering zero-rated sales. We explained that:

> Zero-rated transactions generally refer to the export sale of goods and services. The tax rate in this case is set at zero. When applied to the tax base or the selling price of the goods or services sold, such zero rate results in no tax chargeable against the foreign buyer or customer. But, although the seller in such transactions charges no output tax, he can claim a refund of the VAT that his suppliers charged him. The seller thus enjoys automatic zero rating, which allows him to recover the input taxes he paid relating to the export sales, making him internationally competitive.
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> For the effective zero rating of such transactions, however, the taxpayer has to be VAT-registered and must comply with invoicing requirements. x x x
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> x x x x x x x x x
>
> Petitioner Panasonic points out, however, that in requiring the printing on its sales invoices of the word "zero-rated," the Secretary

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If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and the exempt operations. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

[28] G.R. No. 178090, 612 SCRA 28, February 8, 2010.

of Finance unduly expanded, amended, and modified by a mere regulation (Section 4.108-1 of RR 7-95) the letter and spirit of Sections 113 and 237 of the 1997 NIRC, prior to their amendment by R.A. 9337. Panasonic argues that the 1997 NIRC, which applied to its payments – specifically Sections 113 and 237 – required the VAT-registered taxpayer's receipts or invoices to indicate only the following information:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);

(2) The total amount which the purchaser [paid] or is obligated to pay to the seller with the indication that such amount includes the value-added tax;

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) The name, business style, if any, address and taxpayer's identification number (TIN) of the purchaser, customer or client.

Petitioner Panasonic points out that Sections 113 and 237 did not require the inclusion of the word "zero-rated" for zero-rated sales covered by its receipts or invoices. The BIR incorporated this requirement only after the enactment of R.A. 9337 on November 1, 2005, a law that did not yet exist at the time it issued its invoices.

But when petitioner Panasonic made the export sales subject of this case, *i.e.*, from April 1998 to March 1999, the rule that applied was Section 4.108-1 of RR 7-95, otherwise known as the Consolidated Value-Added Tax Regulations, which the Secretary of Finance issued on December 9, 1995 and [which] took effect on January 1, 1996. It already required the printing of the word "zero-rated" on the invoices covering zero-rated sales. When R.A. 9337 amended the 1997 NIRC on November 1, 2005, it made this particular revenue regulation a part of the tax code. This conversion from regulation to law did not diminish the binding force of such regulation with respect to acts committed prior to the enactment of that law.

Section 4.108-1 of RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1977 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered

sales of goods and services. As aptly explained by the CTA's First Division, the appearance of the word "zero-rated" on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect.

Further, the printing of the word "zero-rated" on the invoice helps segregate sales that are subject to 10% (now 12%) VAT from those sales that are zero-rated. Unable to submit the proper invoices, petitioner Panasonic has been unable to substantiate its claim for refund.[29]

Consistent with the foregoing jurisprudence, petitioner's claim for credit/ refund of input VAT for the taxable quarters of 2000 must be denied. Failure to print the word "zero-rated" on the invoices/receipts is fatal to a claim for credit/ refund of input VAT on zero-rated sales.

**WHEREFORE,** the petition is hereby *DENIED.* The assailed Decision dated January 15, 2007 and the Resolution dated March 16, 2007 of the Court of Tax Appeals *En Banc* are hereby *AFFIRMED.*

**SO ORDERED.**

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

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[29] *Id.* at 34-37.

**THIRD DIVISION**

[G.R. No. 178551. October 11, 2010]

**ATCI OVERSEAS CORPORATION, AMALIA G. IKDAL and MINISTRY OF PUBLIC HEALTH-KUWAIT,** *petitioners, vs.* **MA. JOSEFA ECHIN,** *respondent.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; MIGRANT AND OVERSEAS FILIPINOS' ACT OF 1995 (R.A. NO. 8042); PRIVATE RECRUITMENT AGENCIES ARE JOINTLY AND SOLIDARILY LIABLE WITH THEIR FOREIGN PRINCIPALS; PRIVATE RECRUITMENT AGENCY CANNOT INVOKE THE IMMUNITY FROM SUIT OF ITS FOREIGN PRINCIPAL OR TO WAIT FOR THE JUDICIAL DETERMINATION OF THE FOREIGN PRINCIPAL'S LIABILITY TO EVADE RESPONSIBILITY FOR THE MONEY CLAIMS OF OVERSEAS FILIPINO WORKERS IT DEPLOYS ABROAD.—** Petitioner ATCI, as a private recruitment agency, cannot evade responsibility for the money claims of Overseas Filipino workers (OFWs) which it deploys abroad by the mere expediency of claiming that its foreign principal is a government agency clothed with immunity from suit, or that such foreign principal's liability must first be established before it, as agent, can be held jointly and solidarily liable. In providing for the joint and solidary liability of private recruitment agencies with their foreign principals, Republic Act No. 8042 precisely affords the OFWs with a recourse and assures them of immediate and sufficient payment of what is due them. xxx The imposition of joint and solidary liability is in line with the policy of the state to protect and alleviate the plight of the working class. Verily, to allow petitioners to simply invoke the immunity from suit of its foreign principal or to wait for the judicial determination of the foreign principal's liability before petitioner can be held liable renders the law on joint and solidary liability inutile.

**2. POLITICAL LAW; INTERNATIONAL LAW; DOCTRINE OF PROCESSUAL PRESUMPTION; THE PARTY INVOKING**

**THE APPLICATION OF A FOREIGN LAW HAS THE BURDEN OF PROVING THE LAW.—** Indeed, a contract freely entered into is considered the law between the parties who can establish stipulations, clauses, terms and conditions as they may deem convenient, including the laws which they wish to govern their respective obligations, as long as they are not contrary to law, morals, good customs, public order or public policy. It is hornbook principle, however, that the party invoking the application of a foreign law has the burden of proving the law, under the doctrine of *processual presumption* which, in this case, petitioners failed to discharge. The Court's ruling in *EDI-Staffbuilders Int'l., vs. NLRC* illuminates: x x x **In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law. The foreign law is treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take judicial notice of a foreign law.** He is presumed to know only domestic or forum law. x x x

**3. REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; FOREIGN LAWS MUST NOT ONLY BE ALLEGED, BUT MUST ALSO BE PROVEN; FOREIGN LAW, HOW PROVEN; KUWAITI CIVIL SERVICE LAWS, NOT SUFFICIENTLY PROVED.—** The Philippines does not take judicial notice of foreign laws, hence, they must not only be alleged; they must be proven. To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court xxx. [The documents submitted by the petitioners to prove the Kuwaiti Law], whether taken singly or as a whole, do not sufficiently prove that respondent was validly terminated as a probationary employee under Kuwaiti civil service laws. **Instead of submitting a copy of the pertinent Kuwaiti labor laws duly authenticated and translated by Embassy officials thereat, as required under the Rules, what petitioners submitted were mere certifications attesting only to the correctness of the translations of the MOA and the termination letter which does not prove at all that Kuwaiti civil service laws differ from Philippine laws and that under such Kuwaiti laws, respondent was validly terminated.**

**4. LABOR AND SOCIAL LEGISLATION; MIGRANT AND OVERSEAS FILIPINOS' ACT OF 1995 (R.A. NO. 8042);**

**MONEY CLAIMS; CORPORATE OFFICER IS JOINTLY AND SOLIDARILY LIABLE WITH THE CORPORATION-RECRUITMENT AGENCY FOR ALL MONEY CLAIMS OR DAMAGES THAT MAY BE AWARDED TO THE OVERSEAS WORKERS.—** Respecting Ikdal's joint and solidary liability as a corporate officer, the same is in order too following the express provision of R.A. 8042 on money claims, *viz*: xxx The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. **If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages**.

**APPEARANCES OF COUNSEL**

*Cenon S. Cervantes, Jr.* for petitioners.

**D E C I S I O N**

**CARPIO MORALES, *J.*:**

Josefina Echin (respondent) was hired by petitioner ATCI Overseas Corporation in behalf of its principal-co-petitioner, the Ministry of Public Health of Kuwait (the Ministry), for the position of medical technologist under a two-year contract, denominated as a Memorandum of Agreement (MOA), with a monthly salary of US$1,200.00.

Under the MOA,[1] all newly-hired employees undergo a probationary period of one (1) year and are covered by Kuwait's Civil Service Board Employment Contract No. 2.

[1] Annex "C" of the petition, *rollo*, pp. 59-60.

Respondent was deployed on February 17, 2000 but was terminated from employment on February 11, 2001, she not having allegedly passed the probationary period.

As the Ministry denied respondent's request for reconsideration, she returned to the Philippines on March 17, 2001, shouldering her own air fare.

On July 27, 2001, respondent filed with the National Labor Relations Commission (NLRC) a complaint[2] for illegal dismissal against petitioner ATCI as the local recruitment agency, represented by petitioner, Amalia Ikdal (Ikdal), and the Ministry, as the foreign principal.

By Decision[3] of November 29, 2002, the Labor Arbiter, finding that petitioners neither showed that there was just cause to warrant respondent's dismissal nor that she failed to qualify as a regular employee, held that respondent was illegally dismissed and accordingly ordered petitioners to pay her US$3,600.00, representing her salary for the three months unexpired portion of her contract.

On appeal of petitioners ATCI and Ikdal, the NLRC *affirmed* the Labor Arbiter's decision by Resolution[4] of January 26, 2004. Petitioners' motion for reconsideration having been denied by Resolution[5] of April 22, 2004, they appealed to the Court of Appeals, contending that their principal, the Ministry, being a foreign government agency, is immune from suit and, as such, the immunity extended to them; and that respondent was validly dismissed for her failure to meet the performance rating within the one-year period as required under Kuwait's Civil Service Laws. Petitioners further contended that Ikdal should not be liable as an officer of petitioner ATCI.

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[2] CA *rollo*, p. 197.

[3] *Id* at. 32-36. Penned by Labor Arbiter Fatima Jambaro Franco.

[4] *Id*. at 26-29. Penned by Commissioner (now CA Associate Justice) Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

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

By Decision[6] of March 30, 2007, the appellate court *affirmed* the NLRC Resolution.

In brushing aside petitioners' contention that they only acted as agent of the Ministry and that they cannot be held jointly and solidarily liable with it, the appellate court noted that under the law, a private employment agency shall assume all responsibilities for the implementation of the contract of employment of an overseas worker, hence, it can be sued jointly and severally with the foreign principal for any violation of the recruitment agreement or contract of employment.

As to Ikdal's liability, the appellate court held that under Sec. 10 of Republic Act No. 8042, the "Migrant and Overseas Filipinos' Act of 1995," corporate officers, directors and partners of a recruitment agency may themselves be jointly and solidarily liable with the recruitment agency for money claims and damages awarded to overseas workers.

Petitioners' motion for reconsideration having been denied by the appellate court by Resolution[7] of June 27, 2007, the present petition for review on certiorari was filed.

Petitioners maintain that they should not be held liable because respondent's employment contract specifically stipulates that her employment shall be governed by the Civil Service Law and Regulations of Kuwait. They thus conclude that it was patent error for the labor tribunals and the appellate court to apply the Labor Code provisions governing probationary employment in deciding the present case.

Further, petitioners argue that even the Philippine Overseas Employment Act (POEA) Rules relative to master employment contracts (Part III, Sec. 2 of the POEA Rules and Regulations) accord respect to the "customs, practices, company policies and labor laws and legislation of the host country."

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[6] *Id.* at 95-104. Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Edgardo P. Cruz and Normandie B. Pizarro.

[7] *Id.* at 137. *Ibid.*

Finally, petitioners posit that assuming *arguendo* that Philippine labor laws are applicable, given that the foreign principal is a government agency which is immune from suit, as in fact it did not sign any document agreeing to be held jointly and solidarily liable, petitioner ATCI cannot likewise be held liable, more so since the Ministry's liability had not been judicially determined as jurisdiction was not acquired over it.

The petition fails.

Petitioner ATCI, as a private recruitment agency, cannot evade responsibility for the money claims of Overseas Filipino workers (OFWs) which it deploys abroad by the mere expediency of claiming that its foreign principal is a government agency clothed with immunity from suit, or that such foreign principal's liability must first be established before it, as agent, can be held jointly and solidarily liable.

In providing for the joint and solidary liability of private recruitment agencies with their foreign principals, Republic Act No. 8042 precisely affords the OFWs with a recourse and assures them of immediate and sufficient payment of what is due them. *Skippers United Pacific v. Maguad* [8] explains:

> . . . **[T]he obligations covenanted in the recruitment agreement entered into by and between the local agent and its foreign principal are not coterminous with the term of such agreement** so that if either or both of the parties decide to end the agreement, the responsibilities of such parties towards the contracted employees under the agreement do not at all end, but the same extends up to and until the expiration of the employment contracts of the employees recruited and employed pursuant to the said recruitment agreement. **Otherwise, this will render nugatory the very purpose for which the law governing the employment of workers for foreign jobs abroad was enacted**. (emphasis supplied)

The imposition of joint and solidary liability is in line with the policy of the state to protect and alleviate the plight of the

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[8] G.R. No. 166363, August 15, 2006, 498 SCRA 639, 645 citing *Catan v. NLRC,* 160 SCRA 691.

working class.[9] Verily, to allow petitioners to simply invoke the immunity from suit of its foreign principal or to wait for the judicial determination of the foreign principal's liability before petitioner can be held liable renders the law on joint and solidary liability inutile.

As to petitioners' contentions that Philippine labor laws on probationary employment are not applicable since it was expressly provided in respondent's employment contract, which she voluntarily entered into, that the terms of her engagement shall be governed by prevailing Kuwaiti Civil Service Laws and Regulations as in fact POEA Rules accord respect to such rules, customs and practices of the host country, the same was not substantiated.

Indeed, a contract freely entered into is considered the law between the parties who can establish stipulations, clauses, terms and conditions as they may deem convenient, including the laws which they wish to govern their respective obligations, as long as they are not contrary to law, morals, good customs, public order or public policy.

It is hornbook principle, however, that the party invoking the application of a foreign law has the burden of proving the law, under the doctrine of *processual presumption* which, in this case, petitioners failed to discharge. The Court's ruling in *EDI-Staffbuilders Int'l., v. NLRC*[10] illuminates:

> In the present case, **the employment contract signed by Gran specifically states that Saudi Labor Laws will govern matters not provided for in the contract** (*e.g.* specific causes for termination, termination procedures, *etc.*). Being the law intended by the parties (*lex loci intentiones*) to apply to the contract, Saudi Labor Laws should govern all matters relating to the termination of the employment of Gran.
>
> **In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law. The**

[9] *Datuman v. First Cosmopolitan Manpower And Promotion Services, Inc.*, G.R. No. 156029, November 14, 2008, 571 SCRA 41, 42.

[10] G.R. No. 145587, October 26, 2007, 537 SCRA 409, 430.

**foreign law is treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take judicial notice of a foreign law.** He is presumed to know only domestic or forum law.

**Unfortunately for petitioner, it did not prove the pertinent Saudi laws on the matter; thus, the International Law doctrine of *presumed-identity approach* or *processual presumption* comes into play. Where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours. Thus, we apply Philippine labor laws in determining the issues presented before us.** (emphasis and underscoring supplied)

The Philippines does not take judicial notice of foreign laws, hence, they must not only be alleged; they must be proven. To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court which reads:

SEC. 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. **If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.** (emphasis supplied)

SEC. 25. *What attestation of copy must state.* — Whenever a copy of a document or record is attested for the purpose of the evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

To prove the Kuwaiti law, petitioners submitted the following: MOA between respondent and the Ministry, as represented by ATCI, which provides that the employee is subject to a

probationary period of one (1) year and that the host country's Civil Service Laws and Regulations apply; a translated copy[11] (Arabic to English) of the termination letter to respondent stating that she did not pass the probation terms, without specifying the grounds therefor, and a translated copy of the certificate of termination,[12] both of which documents were certified by Mr. Mustapha Alawi, Head of the Department of Foreign Affairs-Office of Consular Affairs Inslamic Certification and Translation Unit; and respondent's letter[13] of reconsideration to the Ministry, wherein she noted that in her first eight (8) months of employment, she was given a rating of "Excellent" albeit it changed due to changes in her shift of work schedule.

These documents, whether taken singly or as a whole, do not sufficiently prove that respondent was validly terminated as a probationary employee under Kuwaiti civil service laws. **Instead of submitting a copy of the pertinent Kuwaiti labor laws duly authenticated and translated by Embassy officials thereat, as required under the Rules, what petitioners submitted were mere certifications attesting only to the correctness of the translations of the MOA and the termination letter which does not prove at all that Kuwaiti civil service laws differ from Philippine laws and that under such Kuwaiti laws, respondent was validly terminated.** Thus the subject certifications read:

x x x x x x x x x

This is to certify that the herein attached translation/s from Arabic to English/Tagalog and or vice versa was/were presented to this Office for review and certification and the same was/were found to be in order. **This Office, however, assumes no responsibility as to the contents of the document/s.**

This certification is being issued upon request of the interested party for whatever legal purpose it may serve. (emphasis supplied)

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[11] Annex "D" of the petition, *rollo*, pp. 61-63.

[12] Annex "D-1" of the petition, *id.* at 64-66

[13] Annex "E" of the petition, *id.* at 67.

Respecting Ikdal's joint and solidary liability as a corporate officer, the same is in order too following the express provision of R.A. 8042 on money claims, *viz*:

> SEC. 10. *Money Claims*.—Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual moral, exemplary and other forms of damages.
>
> The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. **If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages**. (emphasis and underscoring supplied)

**WHEREFORE,** the petition is *DENIED.*

**SO ORDERED.**

*Brion, Bersamin, Villarama, Jr.,* and *Sereno, JJ.,* concur.

**THIRD DIVISION**

[G.R. No. 182953. October 11, 2010]

**CORAZON D. SARMIENTA, JOSE DERAMA, CATES RAMA, JOSIE MIWA, TOTO NOLASCO, JESUS OLIQUINO, NORBERTO LOPEZ, RUBEN ESPOSO, BERNARDO FLORESCA, MARINA DIMATALO, ROBLE DIMANDAKO, RICARDO PEÑA, EDUARDO ESPINO, ANTONIO GALLEGOS, VICTOR SANDOVAL, FELICITAS ABRANTES, MERCY CRUZ, ROSENDO ORGANO, RICKY BARENO, ANITA TAKSAGON, JOSIE RAMA and PABLO DIMANDAKO,** *petitioners, vs.* **MANALITE HOMEOWNERS ASSOCIATION, INC. (MAHA),** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; ACTIONS; CAUSE OF ACTION; THE ALLEGATIONS IN THE COMPLAINT DETERMINES THE NATURE OF THE ACTION AS WELL AS THE COURT WHICH HAS JURISDICTION OVER THE CASE; ACTION FOR FORCIBLE ENTRY DISTINGUISHED FROM ACTION FOR UNLAWFUL DETAINER. —** Well settled is the rule that what determines the nature of the action as well as the court which has jurisdiction over the case are the allegations in the complaint. In ejectment cases, the complaint should embody such statement of facts as to bring the party clearly within the class of cases under Section 1, Rule 70 of the 1997 Rules of Civil Procedure, as amended. x x x There are two entirely distinct and different causes of action under the aforequoted rule, to wit: (1) a case for forcible entry, which is an action to recover possession of a property from the defendant whose occupation thereof is illegal from the beginning as he acquired possession by force, intimidation, threat, strategy or stealth; and (2) a case for unlawful detainer, which is an action for recovery of possession from the defendant whose possession of the property was inceptively lawful by virtue of a contract (express or implied) with the plaintiff, but became illegal when he continued his

possession despite the termination of his right thereunder. In forcible entry, the plaintiff must allege in the complaint, and prove, that he was in prior physical possession of the property in dispute until he was deprived thereof by the defendant by any of the means provided in Section 1, Rule 70 of the Rules either by force, intimidation, threat, strategy or stealth. In unlawful detainer, there must be an allegation in the complaint of how the possession of defendant started or continued, that is, by virtue of lease or any contract, and that defendant holds possession of the land or building "after the expiration or termination of the right to hold possession by virtue of any contract, express or implied."

**2. ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; COMPLAINT FOR UNLAWFUL DETAINER, SUFFICIENCY OF.** — In the present case, a thorough perusal of the complaint would reveal that the allegations clearly constitute a case of unlawful detainer. x x x. 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.

**3. ID.; ID.; ID.; A PERSON WHO OCCUPIES THE LAND OF ANOTHER AT THE LATTER'S TOLERANCE, WITHOUT ANY CONTRACT BETWEEN THEM, IS NECESSARILY BOUND BY AN IMPLIED PROMISE THAT HE WILL VACATE UPON DEMAND, FAILING WHICH, A SUMMARY ACTION FOR EJECTMENT IS THE PROPER REMEDY AGAINST HIM. —** The evidence proves that after MAHA acquired the property, MAHA tolerated petitioners' stay and gave them the option to acquire portions of the property by becoming members of MAHA. Petitioners' continued stay on the premises was subject to the condition that they shall comply with the requirements of the CMP. Thus, when they failed to fulfill their obligations, MAHA had the right to demand for them to vacate the property as their right of possession had already expired or had been terminated. The moment

MAHA required petitioners to leave, petitioners became deforciants illegally occupying the land. Well settled is the rule that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which, a summary action for ejectment is the proper remedy against him. Thus, the RTC and the CA correctly ruled in favor of MAHA.

**4. ID.; ID.; ID.; UNLAWFUL DETAINER; SOLE ISSUE FOR RESOLUTION IS PHYSICAL OR MATERIAL POSSESSION OF THE PROPERTY INVOLVED; QUESTION OF OWNERSHIP MUST BE THRESHED OUT IN A SEPARATE ACTION. —** As to petitioners' argument that MAHA's title is void for having been secured fraudulently, we find that such issue was improperly raised. In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. Since the only issue involved is the physical or material possession of the premises, that is possession *de facto* and not possession *de jure*, the question of ownership must be threshed out in a separate action.

**APPEARANCES OF COUNSEL**

*Luis O. Oreta* for petitioners.
*Julio F. Andres, Jr.* for respondent.

## D E C I S I O N

**VILLARAMA, JR., *J.*:**

This petition for review on *certiorari* seeks to nullify the Decision[1] dated October 19, 2007 and Resolution[2] dated May 21, 2008 of the Court of Appeals (CA) in CA-G.R. SP No.

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[1] *Rollo*, pp. 30-39. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Lucenito N. Tagle and Ramon R. Garcia concurring.

[2] *Id.* at 132-133.

93050. The CA had affirmed the Decision[3] dated January 10, 2006[4] of the Regional Trial Court (RTC) of Antipolo City, Branch 74, in Civil Case No. 05-485 which reversed the Decision[5] of the Municipal Trial Court in Cities (MTCC) of Antipolo City, Branch 1, in Civil Case No. 104-00.

The case stemmed from a complaint[6] for "*Forcible Entry/ Unlawful Detainer*" filed by respondent Manalite Homeowners Association, Inc. (MAHA) against AMARA W CIGELSALO Association (AMARA) and its members. The complaint was raffled to the MTCC of Antipolo City, Branch 1 and docketed as Civil Case No. 104-00.

MAHA alleged that it is the registered owner of a certain parcel of land covered by Transfer Certificate of Title (TCT) No. 222603[7] with an area of 9,936 square meters situated in Sitio Manalite, Phase I, Barangay Sta. Cruz, Antipolo City.[8] Through force, intimidation, threat, strategy and stealth, petitioners entered the premises and constructed their temporary houses and an office building.[9] Petitioners likewise even filed a civil case to annul MAHA's title on September 2, 1992, but said case was dismissed by the trial court. After said dismissal, MAHA demanded that petitioners vacate the land. Petitioners pleaded that they be given one year within which to look for a place to transfer, to which request MAHA acceded. The said one-year period, however, was repeatedly extended due to the benevolence of MAHA's members. Later on, petitioners came up with a proposal that they become members of MAHA so they can be qualified to acquire

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[3] *Id.* at 74-77.

[4] Erroneously dated January 10, 2005.

[5] *Rollo,* pp. 69-73.

[6] CA *rollo,* pp. 22-25.

[7] *Id.* at 307.

[8] *Id.* at 23.

[9] *Id.*

portions of the property by sale pursuant to the Community Mortgage Program (CMP).[10] MAHA again agreed and tolerated petitioners' possession, giving them until December 1999 to comply with the requirements to avail of the CMP benefits. Petitioners nonetheless failed to comply with said requirements. Thus, on August 9, 2000, MAHA sent formal demand letters to petitioners to vacate the property. Upon the latter's refusal to heed the demand, MAHA filed the complaint for "*Forcible Entry/Unlawful Detainer*."

In their Answer with Counterclaims,[11] petitioners denied the said allegations and averred that they are the owners of the subject lot, having been in actual physical possession thereof for more than thirty (30) years before MAHA intruded into the land. They claimed that as the years went by, they established the AMARA and bought the subject property from Julian Tallano. The property later became known as the Tallano Estate and registered under TCT No. 498. They likewise argued that the allegations in the complaint do not confer jurisdiction upon the court acting as an ejectment court, and that the complaint was irregular and defective because its caption states that it was for "*Forcible Entry/Unlawful Detainer*." MAHA, additionally, had no legal capacity to sue and was guilty of forum shopping. Its officers were likewise fictitious.

On May 19, 2005, the MTCC of Antipolo City rendered a decision dismissing the case for lack of cause of action. The MTCC held that the complaint filed was one of forcible entry, but MAHA failed to establish the jurisdictional requirement of prior physical possession in its complaint.[12] Also, the trial court held that MAHA's failure to initiate immediate legal action after petitioners unlawfully entered its property and its subsequent declaration of benevolence upon the petitioners cannot be construed as tolerance in accordance

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[10] *Id*.

[11] *Id.* at 27-30.

[12] *Rollo*, pp. 72-73.

with law as to justify the treatment of the case as one for unlawful detainer.[13]

MAHA appealed the decision to the RTC. The RTC rendered a Decision dated January 10, 2006, reversing the decision of the MTCC. The RTC held that the lower court erred in dismissing the case by considering the complaint as one of forcible entry which required prior physical possession. The RTC found that MAHA was able to allege and prove by preponderance of evidence that petitioners' occupation of the property was by mere "tolerance." MAHA tolerated the occupation until all those who wanted to acquire MAHA's rights of ownership could comply with membership obligations and dues.[14] Petitioners, however, failed to comply with said obligations within the given period; thus, their occupation became illegal after MAHA demanded that they vacate the property.[15] The dispositive portion of the RTC decision reads:

> WHEREFORE, premises considered, the judgment appealed from is hereby REVERSED and SET ASIDE. A new judgment is rendered ordering the defendants; their representatives and all persons acting for and in their behalf; members of their families; their lessees and sub-lessees; or other people whose occupation of the premises are from the authority of defendants, their representatives or members of the defendants' families; and other transferees *pendente lite*:
>
> 1) to vacate the subject premises;
>
> 2) to pay jointly and severally the plaintiff the sum of THIRTY FIVE THOUSAND PESOS (₱35,000.00) as for attorney's fee[s] and the cost of suit; and,
>
> 3) to pay the plaintiff severally the sum of ONE HUNDRED PESOS (₱100.00) per month from June 1992 until the premises are actually vacated.
>
> SO ORDERED.[16]

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[13] *Id.*

[14] *Id.* at 75-76.

[15] *Id.* at 76.

[16] *Id.* at 76-77.

Aggrieved, petitioners filed a petition for review with the CA assailing the decision of the RTC. In a Decision dated October 19, 2007, the CA affirmed the decision of the RTC. The CA held that while the complaint in the beginning alleged facts which make out a case for forcible entry, the rest of the averments therein show that the cause of action was actually for unlawful detainer. The CA noted that the complaint alleged supervening events that would show that what was initially forcible entry was later tolerated by MAHA thereby converting its cause of action into one for unlawful detainer. Accordingly, the complaint was filed within the required one-year period counted from the date of last demand. The CA further held that the fact that the complaint was captioned as both for forcible entry and unlawful detainer does not render it defective as the nature of the complaint is determined by the allegations of the complaint. The dispositive portion of the CA decision reads,

> WHEREFORE, premises considered, the petition is **DISMISSED** for lack of merit. The decision of the Regional Trial Court of Antipolo City, Branch 74 dated January 10, [2006] is hereby **AFFIRMED**.
>
> SO ORDERED.[17]

Petitioners' motion for reconsideration from the said decision was denied in a Resolution dated May 21, 2008. Hence, petitioners are now before this Court raising the following issues:

> I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT AFFIRMED THE DECISION OF THE REGIONAL TRIAL COURT OF ANTIPOLO CITY, BRANCH 74 IN CIVIL CASE NO. 05-485 REVERSING THE DECISION OF THE MUNICIPAL TRIAL COURT [IN CITIES], BRANCH 1, ANTIPOLO CITY THAT DISMISS[ED] THE FORCIBLE ENTRY/UNLAWFUL DETAINER CASE FOR LACK OF CAUSE OF ACTION.
>
> II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE

[17] *Id.* at 38-39.

COURT [*A QUO*] ACQUIRED JURISDICTION OVER THE SUBJECT MATTER OF THE CASE.

III. WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE COMPLAINT BOTH CAPTIONED AS FORCIBLE ENTRY AND UNLAWFUL DETAINER IS NOT DEFECTIVE.

IV. WHETHER OR NOT THE PETITIONERS [HAVE] A SUPERIOR RIGHT OF POSSESSION OVER THE PROPERTY IN QUESTION.

V. WHETHER OR NOT THE METROPOLITAN TRIAL COURT IN CITIES, BRANCH 1, ANTIPOLO CITY HAS JURISDICTION.

VI. WHETHER OR NOT THE METROPOLITAN TRIAL COURT IN CITIES, BRANCH 1, ANTIPOLO CITY HAS JURISDICTION OVER AN EJECTMENT CASE BASED ON FORCIBLE ENTRY AND UNLAWFUL DETAINER.[18]

Essentially, there are two principal issues for our resolution: (1) whether or not the allegations in the complaint are sufficient to make up a case of forcible entry or unlawful detainer; and (2) whether or not the CA was correct in affirming the RTC's decision finding a case of unlawful detainer.

Petitioners assert that the jurisdictional requirement of prior physical possession in actions for forcible entry was not alleged with particularity in the complaint, as it merely alleged that respondent had been deprived of its possession over the property. They also maintained that they were not withholding possession of the property upon the expiration or termination of their right to possess because they never executed any contract, express or implied, in favor of the respondent. Hence, there was also no unlawful detainer.

We deny the petition.

Well settled is the rule that what determines the nature of the action as well as the court which has jurisdiction over the case are the allegations in the complaint.[19] In ejectment cases,

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[18] *Id.* at 173-175.

[19] *Canlas v. Tubil*, G.R. No. 184285, September 25, 2009, 601 SCRA 147, 156.

the complaint should embody such statement of facts as to bring the party clearly within the class of cases under Section 1, Rule 70 of the 1997 Rules of Civil Procedure, as amended. Section 1 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.

There are two entirely distinct and different causes of action under the aforequoted rule, to wit: (1) a case for forcible entry, which is an action to recover possession of a property from the defendant whose occupation thereof is illegal from the beginning as he acquired possession by force, intimidation, threat, strategy or stealth; and (2) a case for unlawful detainer, which is an action for recovery of possession from the defendant whose possession of the property was inceptively lawful by virtue of a contract (express or implied) with the plaintiff, but became illegal when he continued his possession despite the termination of his right thereunder.

In forcible entry, the plaintiff must allege in the complaint, and prove, that he was in prior physical possession of the property in dispute until he was deprived thereof by the defendant by any of the means provided in Section 1, Rule 70 of the Rules either by force, intimidation, threat, strategy or stealth.[20] In

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[20] *Quizon v. Juan*, G.R. No. 171442, June 17, 2008, 554 SCRA 601, 609-610.

unlawful detainer, there must be an allegation in the complaint of how the possession of defendant started or continued, that is, by virtue of lease or any contract, and that defendant holds possession of the land or building "after the expiration or termination of the right to hold possession by virtue of any contract, express or implied."

In the present case, a thorough perusal of the complaint would reveal that the allegations clearly constitute a case of unlawful detainer:

x x x x x x x x x

3. Plaintiff is the registered owner of that certain parcel of land involved in the instant case covered by TCT No. 222603 containing an area of 9,936 sq.m. situated in Sitio Manalite, Phase I, Baranggay Sta. Cruz, Antipolo City, which property was place under community mortgage program (CMP);

4. Other defendants in the instant case are all member and officers of defendant AMARA who, through force, intimidation, threat, strategy and stealth entered into the premises herein and constructed their temporary houses and office building respectively, pre-empting plaintiff from using the premises thus, depriving the same of its prior possession thereof;

5. On September 2, 1992 as an strategy of the cheapest sort defendants, in conspiracy and collusion with each other, defendants as representative of Heirs of Antonio and Hermogenes Rodriquez, the alleged owner of the property at bar, filed civil case no. 92-2454 against plaintiff, lodge before Branch 73 of the Regional Trial Court of Antipolo City, seeking to annul plaintiff title;

6. Immediately upon final dismissal of such groundless, baseless and malicious suit, plaintiff demanded defendants to vacate the premises, but the latter pleaded with the former to be given a one (1) year period within which to look for a place to transfer, which period, upon pleas of defendants, coupled with plaintiff's benevolence was repeatedly extended by said plaintiffs tolerance of occupancy thereof, but under such terms and conditions. Due to failure to comply with their undertaking despite repeated demands therefor plaintiffs sent a formal demand letter upon defendants;

7. Upon receipt of the above-stated demand, defendants propose to become members of plaintiff, as qualification to acquire portions of the property by sale pursuant to the CMP, to which plaintiff agreed and tolerated defendants possession by giving the same a period until the month of December 1999, to comply with all the requirements pre-requisite to the availing of the CMP benefits but failed and despite repeated demands therefor, thus, the filing of a complaint with the *Baranggay* and the issuance of the certificate to file action dated February 8, 2000;

8. As time is of the essence, and the fact that the defendants are mere intruders or usurpers who have no possessory right whatsoever over the land illegally occupied by them, trifling technicalities that would tend to defeat the speedy administration of justice formal demand is not necessary thereto, (Republic vs. Cruz C.A. G.R. No. 24910 R Feb. 7, 1964) however, to afford a sufficient period of time within which to vacate the premises peacefully another oral and formal demands were made upon the same to that effect, and demolish the temporary office and houses they constructed on plaintiff's property and instead defendants again, as representative to alleged "Estate of Julian Tallano" filed a complaint for ejectment against plaintiffs former President, Hon. Marcelino Aben which case, is docketed as civil case no. 4119, lodged, before branch 11 of this Honorable court, defendants obstinately refused to peacefully turn over the property they intruded upon in fact they even dared plaintiff to file a case against them boasting that nobody can order them to vacate the premises;

9. Defendants' letter dated August 9, 2000, acknowledged actual receipt of plaintiffs two (2) formal demands letters. Thus, "the issuance of *Katibayan Upang Makadulog sa Hukuman*" dated September 25, 2000;

10. As a result thereof, plaintiff was compelled to engage the services of the undersigned counsel in order to immediately institute the instant suit for which services plaintiff agreed to pay the amount of ₱35,000.00 plus ₱3,500.00 per court appearance;

x x x x x x x x x[21]

A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) initially, possession of

[21] *Rollo*, pp. 61-62.

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.[22]

Likewise, the evidence proves that after MAHA acquired the property, MAHA tolerated petitioners' stay and gave them the option to acquire portions of the property by becoming members of MAHA. Petitioners' continued stay on the premises was subject to the condition that they shall comply with the requirements of the CMP. Thus, when they failed to fulfill their obligations, MAHA had the right to demand for them to vacate the property as their right of possession had already expired or had been terminated. The moment MAHA required petitioners to leave, petitioners became deforciants illegally occupying the land.[23] Well settled is the rule that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which, a summary action for ejectment is the proper remedy against him.[24] Thus, the RTC and the CA correctly ruled in favor of MAHA.

As to petitioners' argument that MAHA's title is void for having been secured fraudulently, we find that such issue was improperly raised. In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the

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[22] *Cabrera v. Getaruela*, G.R. No. 164213, April 21, 2009, 586 SCRA 129, 136-137.

[23] See *Go, Jr. v. Court of Appeals*, G.R. No. 142276, August 14, 2001, 362 SCRA 755, 767.

[24] *Acaylar, Jr. v. Harayo*, G.R. No. 176995, July 30, 2008, 560 SCRA 624, 644.

parties.[25] Since the only issue involved is the physical or material possession of the premises, that is possession *de facto* and not possession *de jure*, the question of ownership must be threshed out in a separate action.

**WHEREFORE**, the instant petition for review on *certiorari* is hereby *DENIED* for lack of merit. The Decision dated October 19, 2007 and Resolution dated May 21, 2008 of the Court of Appeals in CA-G.R. SP No. 93050 are hereby *AFFIRMED.*

With costs against petitioners.

**SO ORDERED.**

*Carpio Morales (Chairperson), Brion, Bersamin,* and *Sereno, JJ.*, concur.

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**FIRST DIVISION**

[G.R. No. 184952. October 11, 2010]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **MARIANITO GONZAGA *y* JOMAYA,** *appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED (R.A. NO. 6425); ILLEGAL SALE OF DANGEROUS DRUGS; ESSENTIAL ELEMENTS; PROVED.—** In a prosecution for illegal sale of dangerous drugs, the following elements must concur: "(1) the identity of the buyer and the seller, the object, and consideration; and, (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took

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[25] See *Cabrera v. Getaruela, supra* note 22, at 138.

place, coupled with the presentation in court of the *corpus delicti*." In the case at bench, the prosecution was able to prove all the essential elements of illegal sale of *shabu*.

**2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT WITH RESPECT THERETO ARE ACCORDED RESPECT, ESPECIALLY WHEN SUSTAINED BY THE APPELLATE COURT; APPLIED.—** Appellant contends that it is his testimony and not the statements under oath of the prosecution witnesses that should be the basis in determining the outcome of his case. This contention, however, must fail in view of the established rule that "findings of the trial courts that are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds even more stringent application where said findings are sustained by the [appellate court]." The trial court, as sustained by the CA, found that the testimonies of SPO2 Male and PO3 Garcia were unequivocal, definite and straightforward. Their testimonies were consistent in material respects with each other and the physical evidence. Collectively, the prosecution's evidence proved beyond reasonable doubt the crime charged.

**3. ID.; ID.; ID.; NO BASIS TO SUSPECT THE VERACITY OF THE TESTIMONIES OF THE ARRESTING OFFICERS, ABSENT EVIDENCE OF IMPROPER MOTIVES ON THEIR PART.—** [A]ppellant failed to proffer clear and convincing evidence to overturn the presumption that the arresting officers regularly performed their duties. It was not proven that the police officers "were impelled by improper motives to testify against him. There is, therefore, no basis to suspect the veracity of their testimonies."

**4. ID.; ID.; DEFENSES OF DENIAL AND FRAME-UP; TO PROSPER, THE SAME MUST BE PROVED WITH STRONG AND CONVINCING EVIDENCE; NON-FILING OF ADMINISTRATIVE OR CRIMINAL CHARGES AGAINST THE POLICE OFFICERS BETRAYS CLAIM OF FRAME-UP.—** Appellant's denial and allegation that he was

a victim of frame-up by the arresting officers in their attempt to extort money in exchange for his freedom is implausible. We have invariably viewed with disfavor the defenses of denial and frame-up for such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs. In order to prosper, such defenses must be proved with strong and convincing evidence. In this case, if the police officers indeed tried to extort money from appellant, he should have filed the proper charges against them. The fact that no administrative or criminal charges were filed lends cogency to the conclusion that the alleged frame-up was merely concocted as a defense scheme. This inaction clearly betrays appellant's claim of frame-up.

**5. ID.; ID.; CREDIBILITY OF WITNESSES; DISCREPANCY OR INCONSISTENCY IN THE TESTIMONIES OF PROSECUTION WITNESSES WHICH HAS NOTHING TO DO WITH THE ELEMENTS OF THE CRIME CANNOT BE A GROUND FOR ACQUITTAL OF THE ACCUSED.—** Unfortunately for the appellant, "[f]or a discrepancy or inconsistency between the testimonies of witnesses to serve as basis for acquittal, it must refer to significant facts vital to the guilt or innocence of the accused x x x. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused." Here, the inconsistencies mentioned by appellant refer to trivial matters and are clearly beyond the elements of illegal sale of *shabu* since the same do not pertain to the actual buy-bust itself – that crucial moment when appellant was caught selling *shabu*.

**6. ID.; ID.; ID.; MINOR INCONSISTENCIES IN THE NARRATION OF WITNESSES DO NOT DETRACT FROM THEIR ESSENTIAL CREDIBILITY AS LONG AS THEIR TESTIMONY ON THE WHOLE IS COHERENT AND INTRINSICALLY BELIEVABLE.—** Furthermore, minor inconsistencies do not negate or dissolve the eyewitnesses' positive identification of the appellant as the perpetrator of the crime. "[M]inor inconsistencies in the narration of witnesses do not detract from their essential credibility as long as their testimony on the whole is coherent and intrinsically believable. Inaccuracies may in fact suggest that the witnesses are telling the truth and have not been rehearsed. x x x Witnesses are not expected to remember every single detail of an incident

with perfect or total recall." "The witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime."

**7. CRIMINAL LAW; THE DANGEROUS ACT OF 1972, AS AMENDED (R.A. NO. 6425) ILLEGAL SALE OF DANGEROUS DRUGS; PRESENTATION OF THE INFORMANT IS NOT INDISPENSABLE TO A SUCCESSFUL PROSECUTION OF DRUG-PUSHING.—** We are not impressed with appellant's argument that his conviction was unwarranted due to the non-presentation of the informant who allegedly told the police that he was a drug pusher. The presentation of an informant is not a requisite in a prosecution for drug cases. "The failure of the prosecution to present the informant does not vitiate its cause as the latter's testimony is not indispensible to a successful prosecution for drug-pushing, since his testimony would be merely corroborative of and cumulative with that of the poseur-buyer who was presented in court and who testified on the facts and circumstances of the sale and delivery of the prohibited drug. Failure of the prosecution to produce the informant in court is of no moment, especially when he is not even the best witness to establish the fact that the buy-bust operation has indeed been conducted." Here, SPO2 Male, as poseur-buyer, testified in clear, concise and candid manner on the circumstances regarding the illegal sale of *shabu* made by appellant.

**8. ID.; ID.; ID.; FAILURE TO PRESENT THE MARKED MONEY USED IN THE BUY-BUST OPERATION IS NOT FATAL FOR THE SAME IS MERELY CORROBORATIVE EVIDENCE.—** We are likewise not impressed with the appellant's contention that the failure to present the marked money was fatal to the case against him. "The marked money used in the buy-bust operation is not indispensable in drug cases; it is merely corroborative evidence." In prosecuting a case for the sale of dangerous drugs, the failure to present "marked money does not create a hiatus in the evidence for the prosecution as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation."

**9. ID.; ID.; CHAIN OF CUSTODY; IT MUST BE DULY ESTABLISHED BY EVIDENCE THAT THE SUBSTANCE**

**EXAMINED BY THE FORENSIC CHEMIST WAS THE SAME AS THAT TAKEN FROM THE ACCUSED-APPELLANT; COMPLIED WITH.—** A thorough review of the records reveals that there is no broken chain in the custody of the seized items, later on determined to be *shabu*, from the moment of their confiscation by the buy-bust team, to their turn-over at the police station, to the time same were brought to the forensic chemist for examination, and their subsequent presentation in court during trial. It was duly established by documentary, testimonial, and object evidence, including the markings on the plastic sachets containing the *shabu*, that the substance examined by the forensic chemist was the same as that taken from appellant.

**10. ID.; ID.; ID.; PROCEDURE FOR THE CUSTODY AND DISPOSITION OF SEIZED DANGEROUS DRUGS; FAILURE OF THE BUY-BUST TEAM TO COMPLY STRICTLY WITH THE PROCEDURE WILL NOT OVERTURN THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF THEIR OFFICIAL DUTY.—** Dangerous Drugs Board Regulation No. 3, Series of 1979, provides the procedure for the custody and disposition of confiscated, seized and/or surrendered dangerous drugs at the time of the commission of the crime of illegal sale of *shabu* x x x. While it appears that the buy-bust team failed to comply strictly with the procedure xxx, the same does not overturn the presumption of regularity in the performance of their duty. A violation of the regulation is a matter strictly between the Dangerous Drugs Board and the arresting officers and is totally irrelevant to the prosecution of the criminal case since the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale or transaction is established and the prosecution thereof is not undermined by the arresting officers' inability to conform to the regulations of the Dangerous Drugs Board.

**11. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; ABSENT BAD FAITH, ILL WILL OR TAMPERING OF EVIDENCE, THE INTEGRITY OF THE EVIDENCE IS PRESUMED TO BE PRESERVED.—** Further, the integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Appellant failed to prove the presence of these instances to overcome said presumption.

**12. CRIMINAL LAW; THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED (R.A. NO. 6425); ILLEGAL SALE OF DANGEROUS DRUG; APPELLANT FOUND GUILTY THEREOF; PROPER PENALTY.—** [W]e find no reason to disturb the findings of the trial court, as affirmed by the appellate court, that appellant is guilty beyond reasonable doubt of illegal sale of a dangerous drug, as defined and penalized under Section 15, Article III of RA 6425, as amended. Under Section 15, Article III, in relation to Sec. 20, Article IV, of RA 6425, as amended by RA 7659, the penalty prescribed for unauthorized sale of 200 grams or more of *shabu* or methamphetamine hydrochloride is *reclusion perpetua* to death and a fine ranging from ₱500,000.00 to ₱10 million pesos. Here, the report of the forensic chemist shows that the two plastic sachets contained a total weight of 206.09 grams. With the quantity of the *shabu* exceeding the weight of 200 grams, the proper penalty should be *reclusion perpetua* to death. Since the penalty of *reclusion perpetua* to death consists of two indivisible penalties, appellant was correctly meted the lesser penalty of *reclusion perpetua*, conformably with Article 63(2) of the Revised Penal Code that when there are no mitigating or aggravating circumstances in the commission of the deed, the lesser penalty shall be applied. As to the fine, considering that the amount of *shabu* sold was 206.09 grams, we find the amount of ₱500,000.00 imposed by the trial court as reasonable.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for appellee.

*Elizabeth B. Bayangos & Associates Law Office* for appellant.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

It is the State's policy to safeguard the well-being of its people from the harmful effects of dangerous drugs.[1] Towards this end, law enforcers relentlessly exert their best effort to curb, if not eradicate, illicit drugs trade and all activities associated

[1] See REPUBLIC ACT NO. 9165, Section 1.

therewith. As for this Court, it reiterates its commitment to apply the law against those who engage in illegal drug trade, without compassion.[2]

***Factual Antecedents***

On August 1, 2002, an Information[3] charging appellant Marianito Gonzaga *y* Jomaya with violation of Section 15, Article III of Republic Act (RA) No. 6425, otherwise known as "The Dangerous Drugs Act of 1972," as amended, was filed in the Regional Trial Court of San Pedro, Laguna, Branch 31. The Information contained the following accusatory allegations:

> That on or about May 13, 2002, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and distribute two (2) heat-sealed transparent plastic sachets containing METHAMPHETAMINE HYDROCHLORIDE (*shabu*) with a total weight of 206.09 grams to a Police Poseur-Buyer in exchange for ONE HUNDRED SEVENTY THOUSAND (₱170,000.00) Pesos, wherein one (1) piece of a marked ₱1,000.00 bill with serial number W694556 was used and the rest were boodle money.
>
> CONTRARY TO LAW.

Appellant entered a plea of "not guilty" when arraigned. After the termination of the pre-trial conference, trial ensued.

***The Version of the Prosecution***

The evidence presented by the prosecution established the following case against appellant:

On May 13, 2002, at around one o'clock in the afternoon, a confidential informant arrived at the 4th Regional Narcotics Office, Camp General Vicente Lim, Calamba, Laguna to report that appellant, *alias* Jun, was selling illegal drugs. The confidential informant claimed that he had gained the trust of appellant due to previous transactions. Police Senior Inspector Julius

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[2] See *People v. San Juan*, 427 Phil. 236, 247-248 (2002).

[3] Records, p. 1.

Ceasar Viernes Ablang[4] (P/Sr. Insp. Ablang) immediately organized a buy-bust team with him as the leader, SPO2 Marcelino Male (SPO2 Male) as the poseur-buyer, and PO3 Marino Garcia (PO3 Garcia) and SPO3 Rico Atienza (SP03 Atienza) as police back-up.

P/Sr. Insp. Ablang instructed the confidential informant to contact appellant by phone. He complied and introduced SPO2 Male, who, as poseur-buyer, talked to appellant and successfully arranged for the purchase of 200 grams of *shabu* for ₱170,000.00. Delivery would take place in front of Shakey's at Pacita Complex, San Pedro, Laguna in the late afternoon of the same day.

It was later agreed upon during the briefing that SPO2 Male and the confidential informant would conduct the buy-bust operation inside a vehicle. SPO2 Male would turn on the hazard lights to signify the consummation of the sale. P/Sr. Insp. Ablang then gave SPO2 Male a genuine ₱1,000.00 bill with serial number W694556. SPO2 Male, in turn marked the bill with his initials "MPM," set it on top of the boodle money, and put it inside a white paper envelope.

At around five o'clock in the afternoon, the police buy-bust team proceeded to the designated area. Upon reaching the place, SPO2 Male and the confidential informant parked their vehicle while the other team members positioned themselves nearby and waited for the appellant to arrive. While the confidential informant was waiting outside the vehicle, appellant appeared. They (the appellant and the informant) then approached the vehicle of SPO2 Male, who was occupying the driver's seat. Appellant entered and sat in the front while the confidential informant sat behind him.

The confidential informant introduced appellant to SPO2 Male as the person he talked to over the phone. SPO2 Male then asked appellant if he had the *shabu*, to which the latter replied in the affirmative and in turn asked SPO2 Male if he had the money. SPO2 Male showed appellant the envelope containing the money but demanded to see the *shabu* before turning it

[4] Also spelled as "Ablan" in some parts of the records.

over. Appellant gave him a clutch bag that contained two small plastic sachets of white crystalline substance. Satisfied, SPO2 Male handed over the envelope with the buy-bust money and turned on the hazard lights of the vehicle. As SPO2 Male introduced himself to appellant as a narcotics agent, PO3 Garcia opened the door of the car and immediately arrested appellant after apprising him of his constitutional rights. The buy-bust money was recovered from appellant while the sachets of white crystalline substance were turned-over to P/Sr. Insp. Ablang.

At the police station, P/Sr. Insp. Ablang gave the sachets to SPO2 Male who marked them with his initials, "MPM." He later prepared a written request for laboratory examination dated May 13, 2002 and personally submitted the sachets to the crime laboratory. Chemistry Report No. D-998-02[5] dated May 13, 2002 which was issued by Forensic Chemist Donna Villa P. Huelgas (Forensic Chemist Huelgas) indicated that the two sachets contained 206.09 grams of methamphetamine hydrochloride or *shabu*.

***The Version of the Appellant***

Denying the allegations against him, appellant asserted that in the morning of May 13, 2002, his sister Marianne requested him to accompany her to San Pedro, Laguna, where she would withdraw money and collect payment from a debtor. At around two o'clock in the afternoon, they arrived in said place and his sister withdrew money from Metrobank. Thereafter, they ate in a restaurant in Pacita Complex. While eating, Marianne received a phone call that the debtor would be arriving soon. About 20 minutes later, the debtor arrived in his car and parked in front of the restaurant. Upon Marianne's request, appellant approached the driver of the vehicle to collect the money on her behalf. The driver asked if he is Jun, the brother of Marianne. When he replied in the affirmative, he was told to get inside the car. He complied, but was surprised when the driver sped away from the restaurant. He asked for Marianne's money, but did not receive any reply. Instead, three men alighted from a van trailing them and boarded the vehicle he was riding in. One

[5] Records, p. 14.

of them who was brandishing a gun handcuffed him. They brought him to Camp General Vicente Lim where he saw SPO2 Male, PO3 Garcia and P/Sr. Insp. Ablang for the first time. The latter called up his father and demanded ₱500,000.00 for his release. Refusal would result to his indictment for illegal sale of dangerous drugs, which is a non-bailable offense.

Appellant testified further that Marianne is married to Vicente Sy (Vicente), who is serving the penalty of life imprisonment at the National Bilibid Prison for drug trafficking. Vicente threatened her sister that something bad would happen to her family if she would separate from him.

Marianne and Marianito Gonzaga, Sr. corroborated the testimony of appellant.

***Ruling of the Regional Trial Court***

On May 27, 2004, the trial court rendered a Decision convicting appellant for violation of Section 15, Article III of RA 6425, as amended. The dispositive portion of the Decision reads:

> IN VIEW THEREOF, this Court finds that the prosecution represented by Assistant Provincial Prosecutor Melchorito M.E. Lomarda has duly established the guilt of the accused beyond reasonable doubt of the crime of Violation of Section 15, Article III of RA 6425, as amended, without having been authorized/permitted by law.
>
> WHEREFORE, judgment is hereby rendered sentencing accused Marianito Gonzaga *y* Jomaya to suffer the penalty of *reclusion perpetua*, to pay a fine of ₱500,000, and to pay the costs of suit.
>
> The Officer-in-Charge of this Court is hereby directed to turn-over the evidence consisting of shabu with a total weight of 206.09 grams to the Philippine Drug Enforcement Agency (PDEA) for its proper disposition.
>
> SO ORDERED.[6]

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[6] *Id.* at 286; penned by Judge Stella Cabuco-Andres.

### *Decision of the Court of Appeals*

Due to the penalty imposed, the case was elevated directly to this Court. Conformably with *People v. Mateo*,[7] the case was then transferred to the Court of Appeals (CA), which sustained in all respects the judgment of the trial court. The dispositive portion of its Decision[8] reads:

> WHEREFORE, ***premises considered, the Appeal is hereby*** **DENIED** and the questioned Decision dated May 27, 2004 of the Regional Trial Court (RTC), Branch 31, San Pedro, Laguna in Criminal Case No. 3028-SPL is **AFFIRMED *in toto.***
>
> SO ORDERED.[9]

Thus, this appeal.

### *Assignment of Errors*

In his Brief,[10] appellant initially assigned the following errors:

> A. THE RTC GRIEVOUSLY ERRED IN FINDING THAT THE PHYSICAL AND TESTIMONIAL EVIDENCE PRESENTED BY THE PROSECUTION HAVE PROVEN BEYOND REASONABLE DOUBT THE CULPABILITY OF [APPELLANT] FOR THE CRIME HE IS BEING ACCUSED OF.
>
> B. THE RTC GRIEVOUSLY ERRED IN RELYING HEAVILY ON THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTION ON THE PART OF THE ARRESTING OFFICERS WHEN THE EVIDENCE SHOWS OTHERWISE.
>
> C. THE RTC GRIEVOUSLY ERRED IN HOLDING THAT THE PROSECUTION HAS PRESENTED EVIDENCE SUFFICIENT TO PRODUCE MORAL CERTAINTY OF THE GUILT OF [APPELLANT].

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[7] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[8] CA *rollo*, pp. 152-174; penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Josefina Guevarra-Salonga and Vicente Q. Roxas.

[9] *Id.* at 174.

[10] *Id.* at 44-94.

D. THE RTC GRIEVOUSLY ERRED WHEN IT CONVICTED [APPELLANT] DESPITE THE NON-PRESENTATION OF THE INFORMANT THEREBY DEPRIVING THE [APPELLANT] OF HIS CONSTITUTIONAL RIGHT TO CROSS-EXAMINE HIS ACCUSER.[11]

Appellant assigned two more errors in his Supplemental Brief,[12] to wit:

A. The Regional Trial Court as well as the Honorable Court of Appeals erred in convicting the accused for violation of the crime of violation of Section 15, Article III of R.A. 6425, as amended[, d]espite the fact that [the] defense has proven by clear and convincing evidence that no buy-bust operation was conducted [on] 13 May 2002.

B. The Regional Trial Court as well as the Honorable Court of Appeals erred in convicting Marianito Gonzaga for violation of Section 15, Article III of R.A. 6425, as amended, despite the fact that the alleged shabu, which was allegedly recovered from the accused-appellant, [was] never authenticated for the reason that the arresting officers failed to comply with the rules on chain of custody of evidence.[13]

## Our Ruling

There is no merit in the appeal.

### *Elements for the Prosecution of Illegal Sale of Shabu*

In a prosecution for illegal sale of dangerous drugs, the following elements must concur: "(1) the identity of the buyer and the seller, the object, and consideration; and, (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*."[14]

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[11] *Id.* at 62.

[12] *Rollo*, pp. 38-66.

[13] *Id.* at 46-47.

[14] *People v. Macatingag*, G.R. No. 181037, January 19, 2009, 576 SCRA 354, 361-362.

In the case at bench, the prosecution was able to prove all the essential elements of illegal sale of *shabu*. Appellant was positively identified by the prosecution witnesses as the person who sold the *shabu* presented in court. SPO2 Male, the poseur-buyer, testified that he bought the *shabu* from appellant during a legitimate buy-bust operation. SPO2 Male narrated the circumstances leading to the consummation of the sale of illegal drugs and the arrest of appellant:

Q. When that civilian informant came to your office in the afternoon of May 13, 2002, what if any information did he bring?

A. Our civilian informant informed our team leader that he knows of someone who is offering *shabu* for sale and that person is his acquaintance, sir.

x x x x x x x x x

Q. What other informations, [aside from] the fact that a person was willing to sell *shabu* at ₱1,000.00 per gram, did the informant give to the team leader by way of briefing?

A. In his briefing the name Jun from Marikina was mentioned, sir.

x x x x x x x x x

Q. x x x You said that your civilian informant talked for 30 minutes, what happened after 30 minutes?

A. P/Inspt. Ablang instructed the civilian informant to call this *alias* Jun because he knew the cellphone number, sir.

x x x x x x x x x

Q. And how long did they talk?

A. For about two or three minutes and then he gave the cellphone to me because I was assigned to act as poseur-buyer, sir.

Q. Were you able to talk to that person at the other end of the line?

A. Yes, sir.

x x x x x x x x x

A. I told him that I am in the business of selling *shabu* and then I bargained for the price of the *shabu*, sir.

Q. How much did you quote with respect to the price?

A. I told him that in order for me to earn, I [bargained] for the price of ₱170,000.00 for 200 grams, sir.

x x x x x x x x x

Q. Where in San Pedro are [sic] you going to meet?

A. He told me that it would be easier that we meet in Shakey's Pacita Complex, sir.

Q. What about the time, what was the agreement?

A. He did not give the exact time but he told me that he [would] be [there] late in the afternoon, sir.

Q. x x x what if any did your team leader do?

A. After that, P/Inspt. Ablang gave me a ₱1,000 bill x x x which I x x x initial[ed] and placed x x x on top of a boodle money x x x inside an envelope[. W]e also talked about the buy-bust operation, sir.

Q. Since this is a buy-bust operation, who is supposed to be the poseur-buyer?

A. I would act as the poseur-buyer, sir.

Q. What about the back-up team?

A. It would be PO3 Marino Garcia, sir.

Q. What about any other arrangement?

A. We agreed that I will use a car and then I will let the suspect board the same and if the transaction was done, I will put on the hazard light as a sign of the consummation of the transaction, sir.

x x x x x x x x x

Q. And past 3:00 in the afternoon, where did you proceed?

A. We [were] still in the office at that time and it was about 5:00 in the afternoon x x x when we x x x proceed[ed] to the area, sir.

x x x x x x x x x

Q. On the first vehicle, how many persons were riding including the driver?

A. On board the first vehicle were I and the civilian informant, sir.

Q. What about in the second car?

A. They were three, sir x x x P/Inspt. Ablang, PO3 Garcia and SPO3 Atienza.

Q. What time did you arrive in Pacita Complex?

A. It was already past 6:00 in the evening, sir.

x x x x x x x x x

Q. And what was your first step upon reaching Pacita Complex?

A. I parked near the Shakey's and I told our civilian informant to call up Jun, sir.

x x x x x x x x x

Q. What if any did your civilian informant tell you when he was able to contact Jun?

A. That according to Jun to just wait for him and he will be coming, sir.

x x x x x x x x x

Q. And what happened after that?

A. At about 6:45 in the evening, our civilian informant alighted from the car and waited outside for the arrival of Jun, sir.

x x x x x x x x x

Q. You said that you saw a person that your civilian informant was talking to, when for the first time did you observe that your civilian informant was talking to a person after he alighted?

A. After five minutes because the window of the car was [open], sir.

Q. After five minutes was over, when you noticed that the two were talking, what happened?

A. After that our civilian informant asked Jun to board our car[.] x x x Jun sat in [the] front [seat] while our civilian informant sat at the back x x x, sir.

Q. And what transpired between you and that person who was introduced to you as Jun inside the car?

A. After our civilian informant introduced Jun to me, I told Jun that we have the same line of business and I asked him if he has x x x with him the item, sir.

Q. What is this item that you are referring to?

A. *Shabu*, sir.

Q. And what did this person do when you asked him if he has with him the item?

A. He also asked me if I have with me the money, sir.

Q. And how did you answer him?

A. I told x x x him that I have with me the money and I even showed to him the envelope, sir.

Q. And what happened after you showed to him the envelope?

A. x x x he said "*kaliwaan tayo, isasara ko lang and (sic)bintana*," sir.

x x x x x x x x x

Q. And what happened after he closed the window?

A. x x x he handed to me a clutch bag, sir.

Q. What did you do in return after the clutch bag was handed to you?

A. I told him if I can examine the contents to determine the quality, sir.

Q. And what was the reaction of Jun?

A. He told me to first give the money to him, sir.

Q. And what did you do?

A. I told him that I will first examine the items because he might run away, sir.

x x x x x x x x x

Q. What did you do when he agreed to have you examine the items?

A. I opened the clutch bag [containing] two plastic bags x x x [with] white crystalline substance, sir.

Q. And how big were these plastic bags?

A. The same size [as] the tape recorder used by the stenographer, sir (about 2x4 inches).

x x x x x x x x x

Q. Just a few seconds earlier, I heard you [say] that even at Pacita Complex upon arrival of P/Inspt. Ablang, you turned over to him the plastic bags with white crystalline substance, how did it [happen] that in your office at Camp Vicente Lim, you were able to mark those items with your initials?

A. Because when we arrived at our office, P/Inspt. Ablang brought the items while we [were] preparing the complaint, sir.

x x x x x x x x x

Q. You said that you placed your [initial] on the two plastic bags, from your office did you come to know where these items were brought?

A. After we prepared the complaint, I was the one who personally brought the items to the crime laboratory for examination, sir.

x x x x x x x x x

Q. On page 13 of the record is a copy of the Memorandum for the Chief PNP Crime Laboratory which was previously marked as Exhibit 3 for the defense, please go over this and tell us if your signature is found on that document?

A. Yes, sir.[15]

PO3 Garcia corroborated the testimony of SPO2 Male on relevant points. He testified as follows:

Q. So, you were following behind them and you arrived at about 6:30 P.M. at Pacita Complex[. W]hat happened next after your arrival?

A. After our arrival, we strategically positioned ourselves at Shakey's Food Chain wherein I [as] back-up and x x x arresting

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[15] TSN, December 9, 2002, pp. 4-13.

officer could x x x actually observe the x x x transaction between the poseur-buyer and the suspect, sir.

Q. By that time, you have no way of knowing who x x x was going to sell or dispose of illegal drugs?

A. During our planning, sir.

Q. What was discussed during the planning regarding the physical description of that person?

A. The physical description was disseminated to each and every member based [on] the description given by the confidential informant, sir.

Q. So, what happened next after you posted yourself to observe whatever transaction x x x may be consummated between SPO2 Male and the seller of illegal drugs?

A. On or about 6:45 or 1845 [hours], we saw a man [enter] x x x the car wherein SPO2 Male and the confidential informant [were] positioned, sir.

x x x x x x x x x

Q. How far were you from the person when you first saw him that evening?

x x x x x x x x x

A. x x x we were approximately 10 to 15 meters away from them, sir.

Q. Did you step [outside] the car that you were riding, or you were just inside?

A. Actually, we were not inside the car [at] that particular time, we acted as x x x ordinary passers-by at the place, sir.

x x x x x x x x x

Q. What happened after that person entered the car of SPO2 Male?

A. After 5 to 10 minutes, we observed that the pre-arranged signal was given already by the poseur-buyer by [switching] on the hazard light of that car, sir.

x x x x x x x x x

Q. What did you do as back-up after you saw that the pre-arranged signal in the form of the hazard light was turned on by SPO2 Male?

x x x x x x x x x

A. I immediately opened the right front door of the car and informed the person inside the car particularly the suspect that we [are] policemen and [are arresting him] for [violating] certain provision[s] [of] R.A. 6425[. We likewise] immediately informed him of his constitutional rights, sir.

x x x x x x x x x

Q. So, aside from informing that person who entered the car driven by SPO2 Male regarding his constitutional rights, x x x what else, if any, did you do?

A. We effect[ed] the consented search [during which] we recovered the white paper envelope [containing] the boodle money and the original One Thousand Peso Bill x x x sir.

x x x x x x x x x

Q. And you mentioned a while ago that what was recovered from the accused was a single sachet?

A. The only item I recovered from the suspect was the boodle money as arresting officer, ma'am.[16]

During his re-direct examination, PO3 Garcia corrected and clarified his testimony while on direct examination that he recovered from appellant only one sachet of *shabu*. He testified that two sachets of *shabu* were recovered from appellant. Thus:

Q. Can you please reconcile your apparent contradicting statements wherein you previously stated that you recovered from SPO2 Male one (1) transparent plastic sachet of shabu, whereas in the information you said there were two (2) transparent plastic sachets of shabu x x x?

A. Yes, sir. During the initial direct examination, I humbly admit that I made a mistake.

Q. In what way did you make a mistake?

A. I thought it was only one (1) plastic sachet but I [found] out later based (on) our record that [there were] two (2) plastic sachets, sir.[17]

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[16] TSN, October 21, 2002, pp. 11-26.

[17] TSN, November 27, 2002, p. 3.

Forensic Chemist Huelgas, who examined the confiscated crystalline substance with a quantity of 206.09 grams, found the same to be positive for methamphetamine hydrochloride or *shabu*. This finding is contained in Chemistry Report No. D-998-02.[18]

***The Trial Court's Findings on the Credibility of Witnesses are Afforded Great Respect***

Appellant contends that it is his testimony and not the statements under oath of the prosecution witnesses that should be the basis in determining the outcome of his case. This contention, however, must fail in view of the established rule that "findings of the trial courts that are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds even more stringent application where said findings are sustained by the [appellate court]."[19]

The trial court, as sustained by the CA, found that the testimonies of SPO2 Male and PO3 Garcia were unequivocal, definite and straightforward. Their testimonies were consistent in material respects with each other and the physical evidence. Collectively, the prosecution's evidence proved beyond reasonable doubt the crime charged.

***There Must be Evidence of Improper Motives on the Part of the Arresting Officers***

Moreover, appellant failed to proffer clear and convincing evidence to overturn the presumption that the arresting officers regularly performed their duties. It was not proven that the police officers "were impelled by improper motives to testify

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[18] *Supra* note 5.

[19] *People v. Macatingag*, *supra* note 14 at 366.

against him. There is, therefore, no basis to suspect the veracity of their testimonies."[20]

Appellant's denial and allegation that he was a victim of frame-up by the arresting officers in their attempt to extort money in exchange for his freedom is implausible. We have invariably viewed with disfavor the defenses of denial and frame-up for such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs. In order to prosper, such defenses must be proved with strong and convincing evidence.[21]

In this case, if the police officers indeed tried to extort money from appellant, he should have filed the proper charges against them. The fact that no administrative or criminal charges were filed lends cogency to the conclusion that the alleged frame-up was merely concocted as a defense scheme. This inaction clearly betrays appellant's claim of frame-up.

***The Inconsistencies in the Testimonies of the Prosecution Witnesses are Trivial***

Appellant contends that the trial court and the CA erred in relying on the testimonies of SPO2 Male and PO3 Garcia which were replete with serious contradictions. He claims that there are irreconcilable inconsistencies in their respective accounts of the buy-bust operation. He referred to statements of both police officers as to: (1) the conduct of the confidential informant while allegedly waiting for him at the designated meeting place; (2) who got hold of the boodle money after his arrest; (3) the length of time the briefing for the entrapment operation was held; (4) the size of the sachets and the color of the *shabu* contained therein; and, (5) the person who brought the *shabu* to the crime laboratory.

Unfortunately for the appellant, "[f]or a discrepancy or inconsistency between the testimonies of witnesses to serve as basis for acquittal, it must refer to significant facts vital to the guilt or innocence of the accused x x x. An inconsistency

[20] *Id.*

[21] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused."[22]

Here, the inconsistencies mentioned by appellant refer to trivial matters and are clearly beyond the elements of illegal sale of *shabu* since the same do not pertain to the actual buy-bust itself – that crucial moment when appellant was caught selling *shabu*.[23]

Furthermore, minor inconsistencies do not negate or dissolve the eyewitnesses' positive identification of the appellant as the perpetrator of the crime.[24] "[M]inor inconsistencies in the narration of witnesses do not detract from their essential credibility as long as their testimony on the whole is coherent and intrinsically believable. Inaccuracies may in fact suggest that the witnesses are telling the truth and have not been rehearsed. x x x Witnesses are not expected to remember every single detail of an incident with perfect or total recall."[25] "The witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime."[26]

***The Presentation of the Informant is not Indispensable***

We are not impressed with appellant's argument that his conviction was unwarranted due to the non-presentation of the informant who allegedly told the police that he was a drug pusher. The presentation of an informant is not a requisite in a prosecution for drug cases.[27] "The failure of the prosecution to present the informant does not vitiate its cause as the latter's testimony is not indispensible to a successful prosecution for drug-pushing, since his testimony would be merely corroborative of and cumulative with that of the poseur-buyer who was presented in

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[22] *Id.* at 272.

[23] *Id*.

[24] *People v. Daen, Jr.*, 314 Phil. 280, 292 (1995).

[25] *People v. Alas*, G. R. Nos. 118335-36, June 19, 1997, 274 SCRA 310, 320.

[26] *People v. Cruz*, G.R. No. 185381, December 16, 2009, 608 SCRA 350, 364.

[27] *People v. Ho Chua*, 364 Phil. 497, 513 (1999).

court and who testified on the facts and circumstances of the sale and delivery of the prohibited drug. Failure of the prosecution to produce the informant in court is of no moment, especially when he is not even the best witness to establish the fact that the buy-bust operation has indeed been conducted."[28]

Here, SPO2 Male, as poseur-buyer, testified in clear, concise and candid manner on the circumstances regarding the illegal sale of *shabu* made by appellant. He contacted appellant by cellular phone to verify the report that the latter was engaged in drug pushing and to arrange the sale of 200 grams of *shabu* for ₱170,000.00. After his conversation with appellant, the buy-bust team proceeded to the designated place. The confidential informant introduced him to appellant, who admitted being the same person he transacted with over the cellular phone for the illicit purchase of the *shabu*. Appellant proceeded to give him the *shabu*. As payment, he gave the marked money and boodle money to the appellant. After the consummation of the sale, appellant was arrested.

***The Failure to Present the Marked Money is not Fatal***

We are likewise not impressed with the appellant's contention that the failure to present the marked money was fatal to the case against him."The marked money used in the buy-bust operation is not indispensable in drug cases; it is merely corroborative evidence."[29] In prosecuting a case for the sale of dangerous drugs, the failure to present "marked money does not create a hiatus in the evidence for the prosecution as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation."[30]

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[28] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 445-446.

[29] *People v. Tion*, G.R. No. 172092, December 16, 2009, 608 SCRA 299, 321.

[30] *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 441-442.

***The Chain of Custody in Handling the Shabu Allows Flexibility***

In a final attempt to exonerate himself, appellant asserts that the police operatives failed to comply with the proper procedure on chain of custody of the evidence. He claims that there is no assurance that the sachets seized during the buy-bust operation were the same items marked by SPO2 Male upon his arrival in Camp Vicente Lim. There was also uncertainty that the sachets marked by SPO2 Male were the same items forwarded to the receiving clerk of the crime laboratory and then to the forensic chemist.

The assertion must fail.

A thorough review of the records reveals that there is no broken chain in the custody of the seized items, later on determined to be *shabu*, from the moment of their confiscation by the buy-bust team, to their turn-over at the police station, to the time same were brought to the forensic chemist for examination, and their subsequent presentation in court during trial. It was duly established by documentary, testimonial, and object evidence, including the markings on the plastic sachets containing the *shabu,* that the substance examined by the forensic chemist was the same as that taken from appellant.[31]

Dangerous Drugs Board Regulation No. 3, Series of 1979, which provided the procedure for the custody and disposition of confiscated, seized and/or surrendered dangerous drugs at the time of the commission of the crime of illegal sale of *shabu*, reads:

> Subject: Amendment of Board Resolution No. 7, series of 1974, prescribing the procedure in the custody of seized prohibited and regulated drugs, instruments, apparatuses, and articles specially designed for the use thereof.
>
> [x x x x x x x x x]
>
> SECTION 1. All prohibited and regulated drugs, instruments, apparatuses and articles specially designed for the use thereof when unlawfully used or found in the possession of any person not

[31] *People v. Naelga*, G.R. No. 171018, September 11, 2009, 599 SCRA 477, 493.

authorized to have control and disposition of the same, or when found secreted or abandoned, shall be seized or confiscated by any national, provincial or local law enforcement agency. Any apprehending team having initial custody and control of said drugs and/or paraphernalia, should immediately after seizure and confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and/or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. Thereafter, the seized drugs and paraphernalia shall be immediately brought to a properly equipped government laboratory for a qualitative and quantitative examination.

The apprehending team shall: (a) within forty-eight (48) hours from the seizure inform the Dangerous Drugs Board by telegram of said seizure, the nature and quantity thereof, and who has present custody of the same, and (b) submit to the Board a copy of the mission investigation report within fifteen (15) days from completion of the investigation.[32]

While it appears that the buy-bust team failed to comply strictly with the procedure outlined above, the same does not overturn the presumption of regularity in the performance of their duty. A violation of the regulation is a matter strictly between the Dangerous Drugs Board and the arresting officers and is totally irrelevant to the prosecution of the criminal case since the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale or transaction is established and the prosecution thereof is not undermined by the arresting officers' inability to conform to the regulations of the Dangerous Drugs Board.[33]

Further, the integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with.[34] Appellant failed to prove the presence of these instances to overcome said presumption.

***The Proper Penalty***

All told, we find no reason to disturb the findings of the trial court, as affirmed by the appellate court, that appellant is guilty

[32] Cited in *People v. Kimura*, 471 Phil. 895, 918 (2004).

[33] *People vs. Naelga*, *supra* note at 495.

[34] *Id*. at 497.

beyond reasonable doubt of illegal sale of a dangerous drug, as defined and penalized under Section 15, Article III of RA 6425, as amended.

Under Section 15, Article III, in relation to Sec. 20, Article IV, of RA 6425, as amended by RA 7659, the penalty prescribed for unauthorized sale of 200 grams or more of *shabu* or methamphetamine hydrochloride is *reclusion perpetua* to death and a fine ranging from ₱500,000.00 to ₱10 million pesos.[35]

Here, the report of the forensic chemist shows that the two plastic sachets contained a total weight of 206.09 grams. With the quantity of the *shabu* exceeding the weight of 200 grams, the proper penalty should be *reclusion perpetua* to death. Since the penalty of *reclusion perpetua* to death consists of two indivisible penalties, appellant was correctly meted the lesser penalty of *reclusion perpetua*, conformably with Article 63(2) of the Revised Penal Code that when there are no mitigating or aggravating circumstances in the commission of the deed, the lesser penalty shall be applied. As to the fine, considering that the amount of *shabu* sold was 206.09 grams, we find the amount of ₱500,000.00 imposed by the trial court as reasonable.[36]

**WHEREFORE,** the Decision of the Court of Appeals, which affirmed in all respects the Decision of the Regional Trial Court of San Pedro, Laguna, Branch 31, convicting Marianito Gonzaga *y* Jomaya for violation of Section 15, Article III of Republic Act No. 6425, as amended by Republic Act No. 7659, and sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to pay the fine of ₱500,000.00, is *AFFIRMED in toto*.

**SO ORDERED.**

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

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[35] See also *Ching v. People*, G.R. No. 177237, October 17, 2008, 569 SCRA 711, 736.

[36] *Id.* at 736-737.

**THIRD DIVISION**

[G.R. No. 190804. October 11, 2010]

**PHILIPPINE TRANSMARINE CARRIERS, INC., GLOBAL NAVIGATION, LTD.,** *petitioners, vs.* **SILVINO A. NAZAM,** *respondent.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; SEAFARERS; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); SECTION 20 (B), PARAGRAPH (3) THEREOF; CLAIM FOR DISABILITY BENEFITS, REQUIREMENTS; EFFECT OF NON-COMPLIANCE THEREWITH.—** For an injury or illness to be duly compensated under the terms of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), there must be a showing that the injury or illness and the ensuing disability occurred during the effectivity of the employment contract. Additionally, Section 20(B) of the POEA-SEC, paragraph (3) requires: x x x 3. upon sign off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one-hundred twenty (120) days. **For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.** Respondent was thus required to undergo post-employment medical examination by a company-designated physician within three working days from arrival. He failed to comply with the requirement, however, without explanation or justification therefor. Hence, he forfeited his right to claim disability benefits.

**2. ID.; ID.; ID.; OCCUPATIONAL DISEASES; CONDITIONS TO BE COMPENSABLE.—** Technicality aside, for a disease to be compensable Section 32-A of the POEA-SEC requires proof of the existence of the following conditions: **SECTION 32-A OCCUPATIONAL DISEASES**— For an occupational disease and the resulting disability or death to be compensable, **all** of the following conditions must be satisfied: 1. The **seafarer's work must involve the risks** described herein; 2. The **disease was contracted as a result of the seafarer's exposure** to the describe risks; 3. The **disease was contracted within a period of exposure and under such other factors necessary to contract it**; and 4. There was **no notorious negligence** on the part of the seafarer.

**3. ID.; ID.; ID.; MENTAL DISEASES, WHEN COMPENSABLE; ALLEGATION OF DEPRESSION BROUGHT ABOUT BY THE EMPLOYER'S VERBAL ABUSE, NOT PROVED.—** Specifically with respect to *mental* diseases, for the same to be compensable, the POEA-SEC requires that it must be due to traumatic injury to the head which did not occur in this case. While disability should be understood less on its medical significance but more on the loss of earning capacity, the appellate court's sweeping observations that "the hostile working environment and the emotional turmoil suffered by [herein] respondent from his employers caused him mental and emotional stress that led to severe mental disorder and rendered him permanently unable to perform any work," and that "his working condition increased the risk of sustaining" the illness complained of do not lie. By respondent's claim, he became depressed due to the frequent verbal abuse he received from his German superiors within **less than one month that he was on board the vessel**. Aside from a "To whom it may concern" handwritten letter of respondent attached to his Position Paper filed before the arbiter detailing the alleged instances of verbal abuse, which letter bears the alleged signatures of some of respondent's colleagues, respondent failed to proffer concrete proof that, if indeed he was subjected to abuse, it directly resulted in his depression.

**APPEARANCES OF COUNSEL**

*Del Rosario & Del Rosario* for petitioners.
*Rowena A. Martin* for respondent.

## D E C I S I O N

**CARPIO MORALES, *J.*:**

Seafarer Silvino Nazam (respondent) was hired by petitioner Philippine Transmarine Carriers, Inc. (Transmarine) on behalf of its principal-co-petitioner Global Navigation, Ltd. for the position of Bosun under a 9-month contract,[1] with a salary of US$535 per month.

Respondent was deployed on August 26, 2004 at Ulsan, South Korea on board the vessel *M/V Maersk Durban*, but was repatriated to the Philippines twenty three days later or on September 18, 2004, pursuant to his handwritten letter[2] dated September 16, 2004 requesting that he be relieved. The letter stated, quoted *verbatim*:

SEPT 16 2004

TO MASTER: T.H. GEMULLA
MAERSK DURBAN

RELIEV [*sic*] REQUEST

I AM BOSUN SILVINO A. NAZAM REQUEST MY RELIEVE BECAUSE OF PERSONAL REASONS

(SGD)

BOSUN SILVINO A. NAZAM

On **October 5, 2004**, respondent **filed** with the National Labor Relations Commission (NLRC) a complaint[3] for payment of disability benefits, sickness allowance, damages, and attorney's fees, alleging that the hostile working conditions at the vessel exposed him to humiliation and verbal and mental abuse from the Chief Officer and Master, causing him to suffer hypertension and depression.

[1] Annex "C" of Petition, *rollo*, p. 91.

[2] NLRC records, p, 36.

[3] *Id.* at 2.

Respondent further alleged that he was made to sign blank documents by the Master of the vessel; he was ousted from his post as Bosun; his request for medical assistance on reaching the port of Yokohama, Japan was not granted; and his request for post-employment medical examination upon repatriation was denied by petitioner Transmarine.

Three weeks after filing his complaint or on October 27, 2004, respondent consulted with an independent physician, Dr. Jesus Alberto Q. Poblete (Dr. Poblete), who diagnosed[4] him to be suffering from "Major Depression with Psychotic Features R/O Traumatic Disorder."

Dr. Raymond Rosales (Dr. Rosales) of the Metropolitan Hospital who examined respondent on March 19, 2005 diagnosed him too to be suffering from Depressive Disorder and issued a Medical Certification[5] that respondent was "unfit for sea duty."

Petitioners maintained in its Position Paper[6] that respondent's repatriation was due to his letter-request to be relieved from work; and that respondent's alleged hypertension could not have been acquired during his brief stay on board the vessel.

By Decision[7] of August 29, 2006, Labor Arbiter Ramon Valentin C. Reyes found for respondent and directed petitioners to pay him permanent total disability benefits amounting to US$60,000; sickness allowance of US$2,140; and moral and exemplary damages of ₱50,000 each and 10% of the total award by way of attorney's fees.

In finding for respondent, the arbiter held that since respondent's pre-medical employment records showed that he was fit for sea duty, he could only have acquired the illnesses complained of during his duty at the vessel. The Arbiter added that while "major depression" is not listed as

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[4] *Id.* at 63.

[5] *Id.* at 80.

[6] *Id.* at 16-32.

[7] *Id.* at 92-123.

an occupational disease respondent had proven that it was work-related and the risk of contracting it was increased by the working conditions aboard the vessel.

On appeal, the NLRC *set aside* the Labor Arbiter's Decision by Decision[8] of January 31, 2008 and dismissed respondent's complaint, noting that respondent indeed made a request to be relieved; that respondent failed to undergo the mandatory post-employment medical examination; that respondent failed to show that his repatriation was due to a work-related illness; and that depression is not an occupational disease, hence, not compensable.

The NLRC further noted that respondent sought medical assistance only a month after his repatriation, and the certification issued by Dr. Poblete did not include a disability assessment. Respondent's motion for reconsideration was denied by Resolution[9] of April 25, 2008, hence, he appealed to the Court of Appeals.

By Decision[10] of September 30, 2009, the appellate court *reversed* the decision of the NLRC and reinstated that of the Labor Arbiter, holding that respondent's depression which rendered him unfit to work was a direct result of the demands of his shipboard employment and the harsh and inhumane treatment of the vessel's officers towards him.

Petitioners' motion for reconsideration was denied by the appellate court by Resolution[11] dated December 17, 2009, hence, the present petition for review on *certiorari*.

The petition is meritorious.

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[8] *Id.* at 443-449; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and (now Associate Justice of the Court of Appeals) Angelita A. Gacutan.

[9] *Id.* at 477-479. *Ibid.*

[10] *Id.* at 76-87; penned by Associate Justice Juan Q. Enriquez and concurred in by Associate Justices Pampio A. Abarintos and Francisco P. Acosta.

[11] *Rollo*, pp. 89-90.

For an injury or illness to be duly compensated under the terms of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), there must be a showing that the injury or illness and the ensuing disability occurred during the effectivity of the employment contract. Additionally, Section 20(B) of the POEA-SEC, paragraph (3) requires:

xxx x x x xxx

3. upon sign off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one-hundred twenty (120) days.

**For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.** (emphasis and underscoring supplied)

Respondent was thus required to undergo post-employment medical examination by a company-designated physician within three working days from arrival. He failed to comply with the requirement, however, without explanation or justification therefor. Hence, he forfeited his right to claim disability benefits.

Respondent's claim of having reported to petitioner Transmarine's office within three days from his arrival in the Philippines remains just that. As duly observed by the NLRC, respondent merely consulted a private practitioner more than one month after his arrival – three weeks after he had already filed his complaint for disability benefits; and he secured a medical certification that he was unfit for sea duty

from another private physician only on March, 2005 or six months after his arrival.

Technicality aside, for a disease to be compensable Section 32-A of the POEA-SEC requires proof of the existence of the following conditions:

> **SECTION 32-A OCCUPATIONAL DISEASES**
>
> For an occupational disease and the resulting disability or death to be compensable, **all** of the following conditions must be satisfied:
>
> 1. The **seafarer's work must involve the risks** described herein;
> 2. The **disease was contracted as a result of the seafarer's exposure** to the describe risks;
> 3. The **disease was contracted within a period of exposure and under such other factors necessary to contract it**; and
> 4. There was **no notorious negligence** on the part of the seafarer. (emphasis supplied)

Specifically with respect to *mental* diseases, for the same to be compensable, the POEA-SEC requires that it must be due to traumatic injury to the head[12] which did not occur in this case. While disability should be understood less on its medical significance but more on the loss of earning capacity, the appellate court's sweeping observations that "the hostile working environment and the emotional turmoil suffered by [herein] respondent from his employers caused him mental and emotional stress that led to severe mental disorder and rendered him permanently unable to perform any work," and

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[12] **SECTION 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.**

**HEAD**

**Traumatic head injuries that result to**:

1. Apperture unfilled with bone not over three (3) inches without brain injury . . . . . Gr.9
2. Apperture unfilled with bone over three (3) inches without brain injury . . . . . Gr.3

that "his working condition increased the risk of sustaining" the illness complained of do not lie.

By respondent's claim, he became depressed due to the frequent verbal abuse he received from his German superiors within **less than one month that he was on board the vessel**. Aside from a "To whom it may concern" handwritten letter of respondent[13] attached to his Position Paper filed before the arbiter detailing the alleged instances of verbal abuse, which letter bears the alleged signatures of some of respondent's colleagues, respondent failed to proffer concrete proof that, if indeed he was subjected to abuse, it directly resulted in his depression.

**WHEREFORE**, the petition is *GRANTED*. The Court of Appeals Decision dated September 30, 2009 and the Resolution dated December 17, 2009 are *REVERSED AND SET ASIDE* and the National Labor Relations Commission Decision dated January 31, 2008 and Resolution dated April 25, 2008 dismissing respondent's complaint are *REINSTATED*.

**SO ORDERED**.

*Brion, Bersamin, Villarama, Jr.,* and *Sereno, JJ.,* concur.

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3. Severe paralysis of both upper or lower extremities or one upper and one lower extremity . . . . . Gr.1

4. Moderate paralysis of two (2) extremities producing moderate difficulty in movements with self-care activities . . . . . Gr.6

5. Slight paralysis affecting one extremity producing slight difficulty with self-care activities . . . . . Gr.10

6. **Severe mental disorder or Severe Complex Cerebral function disturbance or post-traumatic psychoneurosis which require aid and attendance as to render worker permanently unable to perform any work . . . . . Gr.1**

7. **Moderate mental disorder or moderate brain functional disturbance which limits worker to the activities of daily living with some directed care or attendance . . . . . Gr.6**

8. **Slight mental disorder or disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the claimant** . . . . . Gr.10

9. Incurable imbecility . . . . . .Gr.1

(emphasis supplied)

[13] NLRC records, p. 61.

**THIRD DIVISION**

[G.R. No. 192473. October 11, 2010]

**S.I.P. FOOD HOUSE and MR. and MRS. ALEJANDRO PABLO,** *petitioners, vs.* **RESTITUTO BATOLINA, ALMER CALUMPISAN, ARIES MALGAPO, ARMANDO MALGAPO, FLORDELIZA MATIAS, PERCIVAL MATIAS, ARWIN MIRANDA, LOPE MATIAS, RAMIL MATIAS, ALLAN STA. INES,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; CONFLICTING FACTUAL FINDINGS OF THE LABOR ARBITER, THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND THE COURT OF APPEALS WARRANT A DEPARTURE FROM THE RULE THAT THE COURT MAY NOT REVIEW FACTUAL FINDINGS.—** While it is the general rule that the Court may not review factual findings of the CA, we deem it proper to depart from the rule and examine the facts of the case in view of the conflicting factual findings of the labor arbiter, on one hand, and the NLRC and the CA, on the other.

**2. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; EMPLOYER-EMPLOYEE RELATIONSHIP, ESSENTIAL ELEMENTS OF; EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS BETWEEN THE PETITIONER AND THEIR RESPONDENTS.—** The CA ruled out SIP's claim that it was a labor-only contractor or a mere agent of GMPC. **We agree** with the CA; SIP and its proprietors could not be considered as mere agents of GMPC because they exercised the essential elements of an employment relationship with the respondents such as hiring, payment of wages and the power of control, not to mention that SIP operated the canteen on its own account as it paid a fee for the use of the building and for the privilege of running the canteen. The fact that the respondents applied with GMPC in February 2004 when it terminated its contract with SIP, is another clear indication that the two entities were

separate and distinct from each other. **We thus see no reason to disturb the CA's findings.**

**3. ID.; ID.; WAGES; VALUE OF THE BOARD AND LODGING, WHEN MAY BE DEDUCTED FROM THE EMPLOYEE'S WAGES; REQUIREMENTS, NOT COMPLIED WITH.—** The free board and lodging SIP furnished the employees cannot operate as a set-off for the underpayment of their wages. We held in *Mabeza v. National Labor Relations Commission* that the employer cannot simply deduct from the employee's wages the value of the board and lodging without satisfying the following requirements: (1) proof that such facilities are customarily furnished by the trade; (2) voluntary acceptance in writing by the employees of the deductible facilities; and (3) proof of the fair and reasonable value of the facilities charged. As the CA aptly noted, it is clear from the records that SIP failed to comply with these requirements.

**4. ID.; ID.; MONETARY AWARD; COMPUTATION THEREOF.—** On the collateral issue of the proper computation of the monetary award, we also find the CA ruling to be in order. Indeed, in the absence of evidence that the employees worked for 26 days a month, no need exists to recompute the award for the respondents who were "explicitly claiming for their salaries and benefits for the services rendered from Monday to Friday or 5 days a week or a total of 20 days a month."

**APPEARANCES OF COUNSEL**

*Baizas Magsino Recinto Law Offices* for petitioners.
*Alfredo D. Pineda* for respondents.

## D E C I S I O N

**BRION, *J.*:**

We resolve the present petition for review on *certiorari*[1] which seeks to nullify the decision[2] and resolution[3] of the Court

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[1] *Rollo*, pp. 11-32.

[2] *Id.* at 37-48.

[3] *Id.* at 51-53.

of Appeals (*CA*), promulgated on November 27, 2009 and May 31, 2010, respectively, in CA-G.R. SP No. 101651.[4]

**The Antecedents**

The facts are laid out in the assailed CA Decision and are summarized below.

The GSIS Multi-Purpose Cooperative (*GMPC*) is an entity organized by the employees of the Government Service Insurance System (*GSIS*).Incidental to its purpose, GMPC wanted to operate a canteen in the new GSIS Building, but had no capability and expertise in this area. Thus, it engaged the services of the petitioner S.I.P. Food House (*SIP*), owned by the spouses Alejandro and Esther Pablo, as concessionaire. The respondents Restituto Batolina and nine (9) others (*the respondents*) worked as waiters and waitresses in the canteen.

In February 2004, GMPC terminated SIP's "contract as GMPC concessionaire," because of GMPC's decision "to take direct investment in and management of the GMPC canteen"; SIP's continued refusal to heed GMPC's directives for service improvement; and the alleged interference of the Pablos' two sons with the operation of the canteen.[5] The termination of the concession contract caused the termination of the respondents' employment, prompting them to file a complaint for illegal dismissal, with money claims, against SIP and the spouses Pablo.

**The Compulsory Arbitration Proceedings**

*The Parties' Positions*

The respondents alleged before the labor arbiter that they were SIP employees, who were illegally dismissed sometime in February and March 2004. SIP did not implement Wage Order Nos. 5 to 11 for the years 1997 to 2004. They did not receive overtime pay although they worked from 6:30 in the morning until 5:30 in the afternoon, or other employee benefits such as

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[4] Entitled *S.I.P. Food House and Mr. and Mrs. Alejandro Pablo v. National Labor Relations Commission and Restituto Batolina, et al.*

[5] *Rollo,* pp. 56-57.

service incentive leave, and maternity benefit (for their co-employee Flordeliza Matias). Their employee contributions were also not remitted to the Social Security System.

To avoid liability, SIP argued that it operated the canteen in behalf of GMPC since it had no authority by itself to do so. The respondents were not its employees, but GMPC's, as shown by their identification cards. It claimed that GMPC terminated its concession and prevented it from having access to the canteen premises as GSIS personnel locked the place; GMPC then operated the canteen on its own, absorbing the respondents for the purpose and assigning them to the same positions they held with SIP. It maintained that the respondents were not dismissed, but were merely prevented by GMPC from performing their functions. For this reason, SIP posited that the legal obligations that would arise under the circumstances have to be shouldered by GMPC.

*The Labor Arbiter's Decision*

Labor Arbiter Francisco A. Robles rendered a Decision on June 30, 2005 dismissing the complaint for lack of merit.[6] He found that the respondents were GMPC's employees, and not SIP's, as there existed a labor-only contracting relationship between the two entities. The labor arbiter, however, opined that even if respondents were considered as SIP's employees, their dismissal would still not be illegal because the termination of its contract to operate the canteen came as a surprise and was against its will, rendering the canteen's closure involuntary.

Arbiter Robles likewise denied the employees' money claims. He ruled that SIP is not liable for unpaid salaries because it had complied with the minimum statutory requirement and had extended better benefits than GMPC; although they were paid only ₱160.00 to ₱220.00 daily, the employees were provided with free board and lodging seven (7) days a week. Neither were the respondents entitled to overtime pay as it was highly improbable that they regularly worked beyond eight (8) hours every day for a canteen that closes after 5:30 p.m.

[6] *Id*. at 69-83.

The respondents brought their case, on appeal, to the National Labor Relations Commission (*NLRC*).

*The NLRC Ruling*

In its Decision of August 30, 2007,[7] the NLRC found that SIP was the respondents' employer, but it sustained the labor arbiter's ruling that the employees were not illegally dismissed as the termination of SIP's concession to operate the canteen constituted an authorized cause for the severance of employer-employee relations. Furthermore, the respondents' admission that they applied with GMPC when it terminated SIP's concession is an indication that they were employees of SIP and that they were terminating their employment relationship with it.As the labor arbiter did, the NLRC regarded the closure of SIP's canteen operations involuntary, thus, negating the employees' entitlement to separation pay.[8]

For failure of SIP to present proof of compliance with the law on the minimum wage, 13th month pay, and service incentive leave, the NLRC awarded the respondents a total of ₱952,865.53 in salary and 13th month pay differentials and service incentive leave pay.[9] The NLRC, however, denied the employees' claim for overtime pay, holding that the respondents failed to present evidence that they rendered two hours overtime work every day of their employment with SIP.

SIP moved for, but failed to secure, a reconsideration of the NLRC decision. It then elevated the case to the CA through a petition for *certiorari* charging the NLRC with grave abuse of discretion in rendering the assailed decision. Essentially, SIP argued that the NLRC erred in declaring that it was the respondents' employer who is liable for their money claims despite its being a labor-only contractor of GMPC.

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[7] *Id.* at 85-93.

[8] *Manaban v. Sarphil Corporation/Apokon Fruits, Inc.*, G.R. No. 150915, April 11, 2005, 455 SCRA 240.

[9] *Rollo*, pp. 95-98; computation of Labor Arbitration Associate Flora P. Juarez.

**The CA Decision**

In its Decision promulgated on November 27, 2009,[10] the CA granted the petition in part. While it affirmed the award, it found merit in SIP's objection to the NLRC computation and assumption that a month had twenty-six (26) working days, instead of twenty (20) working days. The CA recognized that in a government agency such as the GSIS, there are only 20 official business days in a month. It noted that the respondents presented no evidence that the employees worked even outside official business days and hours. It accordingly remanded the case for a recomputation of the award.

Finding substantial evidence in the records supporting the NLRC conclusions, the CA brushed aside SIP's argument that it could not have been the employer of the respondents because it was a mere labor-only contractor of GMPC. It sustained the NLRC's findings that SIP was the respondents' employer.

SIP moved for reconsideration, but the CA denied the motion on May 31, 2010.[11] Hence, the present petition.

**The Petition**

SIP seeks a reversal of the appellate court's ruling that it was the employer of the respondents, claiming that it was merely a labor-only contractor of GMPC.

It insists that it could not be the respondents' employer as it was not allowed to operate a canteen in the GSIS building. It was the GMPC who had the authority to undertake the operation. GMPC only engaged SIP's services because GMPC had no capability or competence in the area. SIP points out that GMPC assumed responsibility for its acts in operating the canteen; all businesses it transacted were under GMPC's name, as well as the business registration and other permits of the canteen, sales receipts and vouchers for food purchased from the canteen; the employees were issued individual ID cards

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[10] *Supra* note 2.

[11] *Supra* note 3.

by GMPC. In sum, SIP contends that its arrangement with GMPC was one of contractor/subcontractor governed by Article 106 of the Labor Code. Lastly, it submits that it was not registered with the Department of Labor and Employment as an independent contractor and, therefore, it is presumed to be a labor-only contractor.

**The Respondents' Comment**

**Without being required by the Court, the respondents filed their comment to SIP's petition on August 3, 2010**.[12] They question the propriety of the petition for review on *certiorari* raising only questions of fact and not of law as required by Rule 45 of the Rules of Court.This notwithstanding, they submit that the CA committed no error in upholding the NLRC's findings of facts which established that SIP was the real employer of Batolina and the other complainants. Thus, SIP was liable to them for their statutory benefits, although it was not made to answer for their lost employment due to the involuntary nature of the canteen's closure.

The respondents pray that the petition be dismissed for lack of merit.

**The Court's Ruling**

We first resolve the alleged impropriety of the petition.[13] While it is the general rule that the Court may not review factual findings of the CA, we deem it proper to depart from the rule and examine the facts of the case in view of the conflicting factual findings of the labor arbiter, on one hand, and the NLRC and the CA, on the other.[14] We, therefore, hold the respondents' position on this point unmeritorious.

We now consider the merits of the case.

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[12] *Rollo*, pp. 102-107.

[13] Filed under Rule 45 of the Rules of Court.

[14] *Cadiz v. Court of Appeals*, G.R. No. 153784, October 25, 2005, 474 SCRA 232; *Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals*, G.R. No. 150232, March 31, 2005, 454 SCRA 737.

*The employer-employee relationship issue*

We affirm the CA ruling that SIP was the respondents' employer. The NLRC decision, which the CA affirmed, states:

> Respondents have been the concessionaire of GMPC canteen for nine (9) years (Annex "A" of Complainants' Sur-Rejoinder…., Records, 302). During this period, complainants were employed at the said canteen (*Sinumpaang Salaysay* of complainants, Records, p. 156). On February 29, 2004, respondents' concession with GMPC was terminated (Annex "C" of Respondents' Answer and Position Paper, Records, p. 77). When respondents were prevented from entering the premises as a result of the termination of their concession, they sent a protest letter dated April 14, 2004 to GMPC thru their counsel. Pertinent portion of the letter:
>
> > We write this letter in behalf of our client Mr. & Mrs. Alejandro C. Pablo, the concessionaires who used to occupy and/or rent the area for a cafeteria/canteen at the 2nd Floor of the GSIS Building for the past several years.
> >
> > Last March 12, 2004, without any court writ or order, and with the aid of your armed agents, you physically barred our clients & their employees/helpers from entering the said premises and from performing their usual duties of serving the food requirements of GSIS personnel and others.
>
> Clearly, no less than respondents, thru their counsel, admitted that complainants herein were their employees.
>
> That complainants were employees of respondents is further bolstered by the fact that respondents do not deny that they were the ones who paid complainants salary. When complainants charged them of underpayment, respondents even interposed the defense of file (*sic*) board and lodging given to complainants.
>
> Furthermore, these IDs issued to complainants bear the signature of respondent Alejandro C. Pablo (Annexes "J", "K", "M" to "M-2" of complainant's Reply. . ., Records, pp. 285 to 290). Likewise, the memoranda issued to complainants regarding their absences without leave were signed by respondent Alejandro C. Pablo (Annexes A, C, E, & G, *Ibid.*, Records, pp. 274, 276, 279, 282). All these pieces of evidence clearly show that respondents are the employer of complainants. (*Rollo*, pp. 87-88.)

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The CA ruled out SIP's claim that it was a labor-only contractor or a mere agent of GMPC. **We agree** with the CA; SIP and its proprietors could not be considered as mere agents of GMPC because they exercised the essential elements of an employment relationship with the respondents such as hiring, payment of wages and the power of control, not to mention that SIP operated the canteen on its own account as it paid a fee for the use of the building and for the privilege of running the canteen. The fact that the respondents applied with GMPC in February 2004 when it terminated its contract with SIP, is another clear indication that the two entities were separate and distinct from each other. **We thus see no reason to disturb the CA's findings.**

*The respondents's money claims*

We likewise affirm the CA ruling on the monetary award to Batolina and the other complainants. The free board and lodging SIP furnished the employees cannot operate as a set-off for the underpayment of their wages. We held in *Mabeza v. National Labor Relations Commission*[15] that the employer cannot simply deduct from the employee's wages the value of the board and lodging without satisfying the following requirements: (1) proof that such facilities are customarily furnished by the trade; (2) voluntary acceptance in writing by the employees of the deductible facilities; and (3) proof of the fair and reasonable value of the facilities charged. As the CA aptly noted, it is clear from the records that SIP failed to comply with these requirements.

On the collateral issue of the proper computation of the monetary award, we also find the CA ruling to be in order. Indeed, in the absence of evidence that the employees worked for 26 days a month, no need exists to recompute the award for the respondents who were "explicitly claiming for their salaries

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[15] G.R. No. 118506, April 18, 1997, 271 SCRA 670.

and benefits for the services rendered from Monday to Friday or 5 days a week or a total of 20 days a month."[16]

In light of the foregoing, **we find no merit in the petition.**

**WHEREFORE,** premises considered, we hereby *DISMISS* the petition for lack of merit. The assailed decision and resolution of the Court of Appeals in CA-G.R. SP No. 101651, are *AFFIRMED.*

**SO ORDERED.**

*Carpio Morales (Chairperson), Bersamin, Villarama, Jr.,* and *Sereno, JJ.,* concur.

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**THIRD DIVISION**

[G.R. No. 192916. October 11, 2010]

**MANUEL A. ECHAVEZ,** *petitioner, vs.* **DOZEN CONSTRUCTION AND DEVELOPMENT CORPORATION and THE REGISTER OF DEEDS OF CEBU CITY,** *respondents.*

**SYLLABUS**

**1. CIVIL LAW; DONATIONS; DONATION *MORTIS CAUSA*; NON-COMPLIANCE WITH THE FORMALITIES PRESCRIBED BY LAW FOR THE VALIDITY OF WILLS RENDERS THE DONATION VOID AND PRODUCES NO EFFECT; THE ATTESTATION CLAUSE MUST CONTAIN THE NUMBER OF PAGES UPON WHICH THE DEED WAS WRITTEN; NOT COMPLIED WITH.—** The CA correctly declared that a donation *mortis causa* must comply with the formalities prescribed by

[16] *Rollo*, pp. 47-48; CA Decision, p. 11, last paragraph.

law for the validity of wills, "otherwise, the donation is void and would produce no effect." Articles 805 and 806 of the Civil Code should have been applied. As the CA correctly found, the purported attestation clause embodied in the Acknowledgment portion does not contain the number of pages on which the deed was written. The exception to this rule in *Singson v. Florentino* and *Taboada v. Hon. Rosal,* cannot be applied to the present case, as the facts of this case are not similar with those of *Singson* and *Taboada*. In those cases, the Court found that although the attestation clause failed to state the number of pages upon which the will was written, the number of pages was stated in one portion of the will. This is not the factual situation in the present case.

**2. ID.; ID.; ID.; ATTESTATION OF A WILL DISTINGUISHED FROM ACKNOWLEDGMENT; ABSENT THE REQUIRED AVOWAL BY THE WITNESSES THEMSELVES, NO ATTESTATION CLAUSE CAN BE DEEMED EMBODIED IN THE ACKNOWLEDGMENT OF THE DEED OF DONATION *MORTIS CAUSA*.—** Even granting that the Acknowledgment embodies what the attestation clause requires, we are not prepared to hold that an attestation clause and an acknowledgment can be merged in one statement. That the requirements of attestation and acknowledgment are embodied in two separate provisions of the Civil Code (Articles 805 and 806, respectively) indicates that the law contemplates two distinct acts that serve different purposes. An acknowledgment is made by one executing a deed, declaring before a competent officer or court that the deed or act is his own. On the other hand, the attestation of a will refers to the act of the instrumental witnesses themselves who certify to the execution of the instrument before them and to the manner of its execution. Although the witnesses in the present case acknowledged the execution of the Deed of Donation *Mortis Causa* before the notary public, this is not the avowal the law requires from the instrumental witnesses to the execution of a decedent's will. An attestation must state all the details the third paragraph of Article 805 requires. In the absence of the required avowal by the witnesses themselves, no attestation clause can be deemed embodied in the Acknowledgement of the Deed of Donation *Mortis Causa*.

**APPEARANCES OF COUNSEL**

*Fernandez & Associates* for petitioner.
*Manuel P. Legaspi* for respondents.

**R E S O L U T I O N**

**BRION, *J.*:**

Vicente Echavez (*Vicente*) was the absolute owner of several lots in Cebu City, which includes Lot No. 1956-A and Lot No. 1959 (*subject lots*). On September 7, 1985, Vicente donated the subject lots to petitioner Manuel Echavez (*Manuel*) through a Deed of Donation *Mortis Causa*.[1] Manuel accepted the donation.

In March 1986, Vicente executed a Contract to Sell over the same lots in favor of Dozen Construction and Development Corporation (*Dozen Corporation*). In October 1986, they executed two Deeds of Absolute Sale over the same properties covered by the previous Contract to Sell.

On November 6, 1986, Vicente died. Emiliano Cabanig, Vicente's nephew, filed a petition for the settlement of Vicente's intestate estate. On the other hand, Manuel filed a **petition to approve Vicente's donation *mortis causa*** in his favor and an **action to annul the contracts of sale** Vicente executed in favor of Dozen Corporation. These cases were jointly heard.

**The Regional Trial Court (*RTC*) dismissed Manuel's petition to approve the donation and his action for annulment**

[1] The deed of donation partly states that:

[T]he DONOR, VICENTE S. ECHAVEZ, for and in consideration of the love and affection upon and unto the DONEE, MANUEL A. ECHAVEZ, and of the uncertainty of life and inevitableness of death that may strike a man at the most unexpected moment, and wishing to give DONEE while able to do so, to take effect after death, the DONOR, do hereby give, transfer and convey by way of donation the following personal and real properties to wit: x x x [Emphasis in the original.], *rollo*, p. 90.

**of the contracts of sale.**[2] The RTC found that the execution of a Contract to Sell in favor of Dozen Corporation, after Vicente had donated the lots to Manuel, was an equivocal act that revoked the donation. The Court of Appeals (*CA*) affirmed the RTC's decision.[3] The CA held that since the donation in favor of Manuel was a donation *mortis causa*, compliance with the formalities for the validity of wills should have been observed. **The CA found that the deed of donation did not contain an attestation clause and was therefore void.**

**The Petition for Review on *Certiorari***

Manuel claims that the CA should have applied the rule on substantial compliance in the construction of a will to Vicente's donation *mortis causa*. He insists that the strict construction of a will was not warranted in the absence of any indication of bad faith, fraud, or substitution in the execution of the Deed of Donation *Mortis Causa*. He argues that the CA ignored the Acknowledgment portion of the deed of donation, which contains the "import and purpose" of the attestation clause required in the execution of wills. The Acknowledgment reads:

BEFORE ME, Notary Public, this 7th day of September 1985 at Talisay, Cebu, personally appeared VICENTE S. Echavez with Res. Cert. No. 16866094 issued on April 10, 1985 at [*sic*] Talisay, Cebu known to me to be the same person who executed the foregoing instrument of Deed of Donartion (sic) *Mortis Causa* before the Notary Public and in the presence of the foregoing three (3) witnesses who signed this instrument before and in the presence of each other and of the Notary Public and all of them acknowledge to me that the same is their voluntary act and deed. [Emphasis in the original.]

**THE COURT'S RULING**

The CA correctly declared that a donation *mortis causa* must comply with the formalities prescribed by law for the

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[2] In SP Proc. No. 1776-CEB dated December 27, 1996, *rollo*, pp. 25-28.

[3] In CA-G.R. CV No. 58328 dated May 29, 2000, *id*. at 84-97.

validity of wills,[4] "otherwise, the donation is void and would produce no effect."[5] Articles 805 and 806 of the Civil Code should have been applied.

As the CA correctly found, the purported attestation clause embodied in the Acknowledgment portion does not contain the number of pages on which the deed was written. The exception to this rule in *Singson v. Florentino*[6] and *Taboada v. Hon. Rosal*,[7] cannot be applied to the present case, as the facts of this case are not similar with those of *Singson* and *Taboada*. In those cases, the Court found that although the attestation clause failed to state the number of pages upon which the will was written, the number of pages was stated in one portion of the will. This is not the factual situation in the present case.

Even granting that the Acknowledgment embodies what the attestation clause requires, we are not prepared to hold that an attestation clause and an acknowledgment can be merged in one statement. That the requirements of attestation and acknowledgment are embodied in two separate provisions of the Civil Code (Articles 805 and 806, respectively) indicates that the law contemplates two distinct acts that serve different purposes. An acknowledgment is made by one executing a deed, declaring before a competent officer or court that the deed or act is his own. On the other hand, the attestation of a will refers to the act of the instrumental witnesses themselves who certify to the execution of the instrument before them and to the manner of its execution.[8]

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[4] CIVIL CODE, Article 728, which states:

Donations which are to take effect upon the death of the donor partake the nature of testamentary provisions, and shall be governed by the rules established in the Title on Succession.

[5] *Maglasang v. Heirs of Corazon Cabatingan*, G.R. No. 131953, June 5, 2002, 383 SCRA 6, citing *The National Treasurer of the Phils. v. Vda. de Meimban*, G.R. No. 61023, August 22, 1984, 131 SCRA 264.

[6] 92 Phil. 161 (1952).

[7] G.R. No. L-36033, November 5, 1982, 118 SCRA 195.

[8] *Tenefrancia v. Abaja*, 87 Phil. 139 (1950).

Although the witnesses in the present case acknowledged the execution of the Deed of Donation *Mortis Causa* before the notary public, this is not the avowal the law requires from the instrumental witnesses to the execution of a decedent's will. An attestation must state all the details the third paragraph of Article 805 requires. In the absence of the required avowal by the witnesses themselves, no attestation clause can be deemed embodied in the Acknowledgement of the Deed of Donation *Mortis Causa*.

Finding no reversible error committed by the CA, the Court hereby *DENIES* Manuel's petition for review on *certiorari*.

**SO ORDERED.**

*Carpio Morales, Bersamin, Villarama, Jr.* and *Sereno, JJ.,* concur.

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**EN BANC**

[A.C. No. 2655. October 12, 2010]

**LEONARD W. RICHARDS,** *complainant, vs.* **PATRICIO A. ASOY,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; ALIBI; DOCUMENTARY EVIDENCE; IN THE CASE AT BAR, RESPONDENT ASOY'S ALLEGATION THAT HE COULD NOT LOCATE COMPLAINANT RICHARDS' ADDRESS FAILS IN VIEW OF THE FACT THAT COMPLAINANT'S ADDRESS IN HIS LETTERS AND IN THE COURT'S RESOLUTION ARE ONE AND THE SAME.—** Respondent justifies his belated – nine years– compliance with this Court's order for him to reimburse complainant the amount with his alleged inability to locate complainant. If that were the case, respondent could

have obtained complainant's address from this Court, either through the Office of the Clerk of Court or the Office of the Bar Confidant. Recall that in his letters of November 3, 1987 and January 20, 1989, complainant's given address was the same as that stated in the Court's July 9, 1987 Resolution 4/169 Avoca Street, Randwick NSW 2031, Australia.

**2. LEGAL ETHICS; LAWYERS; LAWFUL ORDERS OF THE COURT; RESPONDENT ASOY'S JUSTIFICATION BETRAYS A CLEAR AND CONTUMACIOUS DISREGARD FOR THE LAWFUL ORDERS OF THIS COURT.—** The lack of any sufficient justification or explanation for the nine-year delay in complying with the Court's July 9, 1987 and March 15, 1988 Resolutions to reimburse complainant betrays a clear and contumacious disregard for the lawful orders of this Court.

**3. ID.; ID.; ESTEEMED BROTHERHOOD; IN THE CASE AT BAR, RESPONDENT ASOY'S JUSTIFICATION GLARINGLY SPEAKS OF HIS QUALITIES THAT DO NOT ENDEAR HIM TO THE ESTEEMED BROTHERHOOD OF LAWYERS.—** Respondent's justification for his 9-year belated "compliance" with the order for him to reimburse complainant glaringly speaks of his lack of candor, of his dishonesty, if not defiance of Court orders, qualities that do not endear him to the esteemed brotherhood of lawyers.

**4. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; CANONS 7 AND 10; RULE 10.01; IN THE CASE AT BAR, RESPONDENT ASOY CLEARLY VIOLATED THE ABOVE CANONS AND RULE.—** Such disrespect on the part of respondent constitutes a clear violation of the lawyer's Code of Professional Responsibility which maintains that: "CANON 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the Integrated Bar. x x x CANON 10 — A lawyer owes candor, fairness and good faith to the court. Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead or allow the court to be misled by any artifice."

**5. ID.; ID.; ID.; CANONS 7 AND 10; RULE 10.01; IN THE CASE AT BAR, RESPONDENT ASOY CLEARLY VIOLATED THE ABOVE CANONS AND RULE; THE LAWYER'S SOLEMN OATH IS A SACRED TRUST.—** The solemn oath which all

lawyers take upon admission to the bar to dedicate their lives to the pursuit of justice is neither a mere formality nor hollow words meant to be taken lightly, but a sacred trust that lawyers must uphold and keep inviolable at all times.

**6. ID.; ID.; DIGNITY OF CALLING; IN THE CASE AT BAR, RESPONDENT ASOY DENIGRATED HIS CALLING BY TAKING HIS SWEET TIME TO EFFECT REIMBURSEMENT OF THE ₱16,300.00 AND THROUGH CONSIGNATION WITH THIS COURT AT THAT.—** Respondent denigrates the dignity of his calling by displaying a lack of candor towards this Court. By taking his sweet time to effect reimbursement of the ₱16,300.00 — and through consignation with this Court at that — he sent out a strong message that the legal processes and orders of this Court could be treated with disdain or impunity.

**7. REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE; IN THE CASE AT BAR; THE RECORDS ARE BEREFT OF PROOF THAT RESPONDENT ASOY HAD ACTUALLY RESORTED TO REIMBURSING THE COMPLAINANT RICHARDS DIRECTLY.—** Parenthetically, respondent's consignation could not even be deemed compliance with the Court's directive to reimburse. The Court does not represent complainant; the latter's postal address was readily ascertainable from the records had respondent wished to communicate with complainant for the purpose of making amends. The records are bereft of proof that respondent had actually resorted to reimbursing the complainant directly. In short, evidence of atonement for respondent's misdeeds is sorely wanting.

**APPEARANCES OF COUNSEL**

*Funa Balayn Fortes & Villagonzalo Law Offices* for respondent.

## R E S O L U T I O N

***PER CURIAM*:**

For consideration is the petition of Patricio A. Asoy (respondent) for reinstatement to the Bar. Records disclose that the Ministry of Tourism, by 1st Indorsement of July 2, 1984, forwarded to the Court a June 28, 1984 letter-complaint of Leonard Richards (complainant) against respondent.

By Resolution of November 11, 1985, the Court, noting respondent's failure to comply, despite notice, with its Resolution of August 8, 1984 requiring him to comment on complainant's letter, resolved to require him to show cause why he should not be disciplinarily dealt with or held in contempt and to comply with the said Resolution of August 8, 1984, both within ten days from notice.

In the same Resolution of November 11, 1985, the Court noted several attempts, which were all futile, to serve copy of the August 8, 1984 Resolution at respondent's other addresses, *viz*: B.F. Homes, Parañaque; the Central Bank Legal Department; Suite 306, Filmanbank Building, Plaza Sta. Cruz, Sta. Cruz; Asia International Builders Corp., 5th Floor, ADC Bldg., Ayala Avenue, Makati (the address given in respondent's calling card); and respondent's provincial address at the Bar Office which was coursed through the IBP Tacloban Chapter.[1]

Still in the same Resolution of November 11, 1985, the Court noted that "unquestionably, respondent had gone into hiding and was evading service of pleadings/orders/processes of this Court."[2] The Court accordingly suspended respondent from the practice of law until further orders from this Court. Thus it disposed:

ACCORDINGLY, respondent, Atty. Patricio A. Asoy, is hereby SUSPENDED from the practice of law until further Orders of this Court. Let copies of this Resolution be circularized to all Courts.

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[1] *Rollo*, p. 127.

[2] *Id*. at 130.

Should respondent appear before any lower Court, the latter shall serve upon him a copy of this Resolution and require him to appear, within five (5) days, before the Deputy Clerk of Court and Bar Confidant, who shall furnish him with a copy of the Administrative Complaint and **require him to file an Answer** thereto, **within five (5) days thereafter**. The lower Court concerned shall furnish this Court with copy of its Order immediately.[3] (emphasis and underscoring supplied)

On January 9, 1986, respondent filed before the Court a MANIFESTATION/MOTION FOR RECONSIDERATION alleging that on December 2, 1985, he "learned and secured a copy of Supervisory Circular No. 17 wherein the Resolution of the . . . Court, promulgated on November 11, 1985 is quoted . . ."; that he was voluntarily submitting himself to the jurisdiction of the Court even if he had not been formally served a copy of the Resolution and had not been ordered by any lower court to appear before the Deputy Clerk of Court and Bar Confidant; that on account of distance and financial constraints, he could not possibly comply with the Order of this Court for him to appear before the Deputy Clerk of Court and Bar Confidant within the five-day period stated; that he was totally unaware of the existence of the complaint until December 2, 1985; and that to the best of his knowledge, he had not violated his oath as an attorney at law nor is he guilty of any offense to warrant his suspension from the practice of law.

Respondent thus prayed for the lifting of his suspension and for excusing him from personally appearing before the Bar Confidant upon the undertaking that he would answer the complaint in five days from receipt thereof.

On the directive of the Court, the Bar Confidant formalized the complaint against respondent on April 29, 1986.

By Resolution of October 1, 1986, the Court, noting respondent's failure to file comment on the administrative complaint within the period which expired on May 21, 1986, directed the sending of the administrative complaint to respondent

[3] *Id*. at 71.

at his address in Iligan City for compliance with the Resolution requiring him to file Answer to the Complaint.

On December 18, 1986, the Court received respondent's ANSWER WITH MOTION TO LIFT ORDER OF SUSPENSION, alleging that he received copy of the complaint only on November 19, 1986, "though the same was served and received at this present address (Rm. 302 Aalos Building, Aguinaldo St., Iligan City) on May 6, 1986 and November 5, 1986"; and that he was begging the indulgence of the Court and of the complainant for the delay in the filing of his Answer due to his temporary transfer to Tubud, Lanao del Norte in view of his temporary appointment as Provincial Administrator.

By Resolution of February 10, 1986, the Court denied respondent's prayer to lift the order of suspension from the practice of law but excused him from appearing before the Deputy Clerk of Court and Bar Confidant.

The Court, by Resolution of July 9, 1987, after noting respondent's unquestionable act of going into hiding and evading service of pleadings/orders/processes of the Court which resulted in his suspension, and after reciting the facts of the case which required no further evidentiary hearing as they spoke for themselves, found respondent guilty of **grave professional misconduct**, *viz*:

> Respondent is guilty of grave professional misconduct. He received from complainant, his client, compensation to handle his case in the Trial Court, but the same was dismissed for lack of interest and failure to prosecute. He had abandoned his client in violation of his contract ignoring the most elementary principles of professional ethics. That Respondent had ignored the processes of this Court and it was only after he was suspended from the practice of law that he surfaced, is highly indicative of his **disregard of an attorney's duties to the Court**. All the facts and circumstances taken into consideration, Respondent has proven himself unworthy of the trust reposed in him by law as an officer of the court.[4] (emphasis and underscoring supplied)

[4] *Id*. at 135.

The Court thereupon resolved to DISBAR him and order him to reimburse complainant the sum of ₱16,300 within thirty (30) days from notice. Thus the Court disposed:

> ACCORDINGLY, for malpractice and violation of his oath as a lawyer, 1) respondent Atty. Patricio A. Asoy is hereby ordered **DISBARRED**; and 2) he is hereby ordered to **reimburse complainant**, Leonard W. Richards, in the sum of ₱16,300.00 (₱15,000.00 + 1,300.00), the only sums substantiated by the evidence on record, within thirty (30) days from notice hereof.
>
> Copies of this Resolution shall be circulated to all Courts of the country and spread on the personal record of respondent Atty. Patricio A. Asoy.
>
> Copies of this Resolution shall likewise be furnished Complainant Leonard W. Richards, via airmail, at his address of record, **4/169 Avoca Street, Randwick NSW 2031, Australia**, with copy furnished the Department of Foreign Affairs for onward transmittal to the Philippine Consulate General, Sydney, Australia.
>
> SO ORDERED.[5] (emphasis and underscoring supplied)

After the promulgation of the July 9, 1987 Resolution, complainant, by letter dated November 3, 1987 which was received by the Court on November 11, 1987,[6] complained that respondent had not reimbursed him the ₱16,300.00.

By Resolution of March 15, 1988, the Court, noting respondent's failure to comply with its Resolution of July 9, 1987, resolved to require respondents to show cause why he failed to reimburse the ₱16,300.00 to complainant as required in its Resolution of July 9, 1987, and to comply with said Resolution of July 9, 1987, both within ten days from notice.

Complainant, by another letter of January 13, 1989[7] which was received by the Court on January 20, 1989, informed that respondent still failed to comply with the order for reimbursement to him of ₱16,300.00.

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[5] *Id*. at 136.

[6] *Id*. at 98.

[7] Records, p. 100.

Thirteen years after the promulgation of the Court's Resolution disbarring respondent or on July 18, 2000, respondent filed a Petition for "readmission to the practice of law" stating, among other things, that on January 2, 1996 or about nine years after his disbarment and directive to reimbursement complainant was made, he effected payment of ₱16,300 via consignation with this Court's Office of the Cashier. By Resolution of December 12, 2000, the Court DENIED the petition for lack of merit.

More than nine years after the Court denied his petition for "readmission to the practice of law" or on August 2, 2010, the Court received another Petition from respondent, for "Reinstatement to the Bar," stating that, among other things, on January 2, 1996, he effected payment of ₱16,300.00 in favor of complainant by consignation of the amount with the Office of the Cashier of the Supreme Court as complainant could no longer be found or located; that he had already suffered and agonized for his shortcomings; and that as "positive evidence of his repentance and rehabilitation," he attached testimonials of "credible institutions and personalities."

Respondent justifies his belated — nine years — compliance with this Court's order for him to reimburse complaint the amount with his alleged inability to locate complainant. If that were the case, respondent could have obtained complainant's address from this Court, either through the Office of the Clerk of Court or the Office of the Bar Confidant.Recall that in his letters of November 3, 1987 and January 20, 1989, complainant's given address was the same as that stated in the Court's July 9, 1987 Resolution — 4/169 Avoca Street, Randwick NSW 2031, Australia.

Respondent's justification for his 9-year belated "compliance" with the order for him to reimburse complainant glaringly speaks of his lack of candor, of his dishonesty, if not defiance of Court orders, qualities that do not endear him to the esteemed brotherhood of lawyers. The solemn oath which all lawyers take upon admission to the bar to dedicate their lives to the pursuit of justice is neither a mere formality nor hollow words meant to be taken lightly, but a sacred trust that lawyers must

uphold and keep inviolable at all times.[8] The lack of any sufficient justification or explanation for the nine-year delay in complying with the Court's July 9, 1987 and March 15, 1988 Resolutions to reimburse complainant betrays a clear and contumacious disregard for the lawful orders of this Court. Such disrespect on the part of respondent constitutes a clear violation of the lawyer's Code of Professional Responsibility which maintains that:

> CANON 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the Integrated Bar.
>
> x x x x x x x x x
>
> CANON 10 — A lawyer owes candor, fairness and good faith to the court.
>
> Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead or allow the court to be misled by any artifice.

Respondent denigrates the dignity of his calling by displaying a lack of candor towards this Court. By taking his sweet time to effect reimbursement of the ₱16,300.00 – and through consignation with this Court at that — he sent out a strong message that the legal processes and orders of this Court could be treated with disdain or impunity.

Parenthetically, respondent's consignation could not even be deemed compliance with the Court's directive to reimburse. The Court does not represent complainant; the latter's postal address was readily ascertainable from the records had respondent wished to communicate with complainant for the purpose of making amends. The records are bereft of proof that respondent had actually resorted to reimbursing the complainant directly. In short, evidence of atonement for respondent's misdeeds is sorely wanting.

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[8] *Ting-Dumali v. Torres*, A.C. No. 5161, April 14, 2004, 427 SCRA 108, 115; *Radjaie v. Alovera*, A.C. No. 4748, August 4, 2000, 337 SCRA 244, 255-256.

**WHEREFORE,** respondent Patricio A. Asoy's petition for reinstatement in the Roll of Attorneys is *DENIED.*

**SO ORDERED.**

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

*Carpio* and *Abad, JJ.,* on official leave.

*Peralta, J.,* on leave.

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**EN BANC**

[A.M. No. 10-7-17-SC. October 12, 2010]

## IN THE MATTER OF THE CHARGES OF PLAGIARISM, ETC., AGAINST ASSOCIATE JUSTICE MARIANO C. DEL CASTILLO

**SYLLABUS**

**1. COMMERCIAL LAW; INTELLECTUAL PROPERTY; PLAGIARISM; PASSING OFF OF THE WORK OF ANOTHER AS ONE'S OWN. —** At its most basic, plagiarism means the theft of another person's language, thoughts, or ideas. To plagiarize, as it is commonly understood according to Webster, is "to take (ideas, writings, *etc*.) from (another) and pass them off as one's own." The passing off of the work of another as one's own is thus an indispensable element of plagiarism.

**2. ID.; ID.; ID.; PRESUPPOSES INTENT AND A DELIBERATE, CONSCIOUS EFFORT. —** Indeed, the 8th edition of Black's Law Dictionary defines plagiarism as the "deliberate and knowing presentation of another person's original ideas or creative expressions as one's own." Thus, plagiarism presupposes intent

and a deliberate, conscious effort to steal another's work and pass it off as one's own.

**3. ID.; ID.; ID.; ID.; ID.; WHETHER OR NOT THE FOOTNOTE IS SUFFICIENTLY DETAILED IS NOT AN ETHICAL MATTER BUT ONE CONCERNING CLARITY OF WRITING. —** Petitioners point out that the *Vinuya* decision lifted passages from Tams' book, *Enforcing Erga Omnes Obligations in International Law (2006)* and used them in Footnote 69 with what the author thought was a mere generic reference. But, although Tams himself may have believed that the footnoting in this case was not "an appropriate form of referencing," he and petitioners cannot deny that the decision did attribute the source or sources of such passages. Justice Del Castillo did not pass off Tams' work as his own. The Justice primarily attributed the ideas embodied in the passages to Bruno Simma, whom Tams himself credited for them. Still, Footnote 69 mentioned, apart from Simma, Tams' article as another source of those ideas. The Court believes that whether or not the footnote is sufficiently detailed, so as to satisfy the footnoting standards of counsel for petitioners is not an ethical matter but one concerning clarity of writing. The statement "*See* Tams, Enforcing Obligations *Erga Omnes* in International Law (2005)" in the *Vinuya* decision is an attribution no matter if Tams thought that it gave him somewhat less credit than he deserved. Such attribution altogether negates the idea that Justice Del Castillo passed off the challenged passages as his own.

**4. ID.; ID.; ID.; ID.; ID.; IMPRECISE CITATIONS WOULD JUST BE A CASE OF BAD FOOTNOTING RATHER THAN ONE OF THEFT OR DECEIT. —** That it would have been better had Justice Del Castillo used the introductory phrase "*cited in*" rather than the phrase "*See*" would make a case of mere inadvertent slip in attribution rather than a case of "manifest intellectual theft and outright plagiarism." If the Justice's citations were imprecise, it would just be a case of bad footnoting rather than one of theft or deceit. If it were otherwise, many would be target of abuse for every editorial error, for every mistake in citing pagination, and for every technical detail of form.

**5. ID.; ID.; ID.; ID.; ID.; COURTS FIND CREDIBLE RESEARCHER'S ACCIDENTAL DECAPITATION OF ATTRIBUTIONS TO SOURCES OF RESEARCH MATERIALS; CASE AT BAR. —** Petitioners also attack the Court's decision for lifting and using as footnotes, without attribution to the author, passages from

the published work of Ellis. The Court made the following statement on page 27 of its decision, marked with Footnote 65 at the end; **We fully agree that rape, sexual slavery, torture, and sexual violence are morally reprehensible as well as legally prohibited under contemporary international law. 65 xxx** Footnote 65 appears down the bottom of the page. Since the lengthy passages in that footnote came almost verbatim from Ellis' article, such passages ought to have been introduced by an acknowledgement that they are from that article. x x x But, as it happened, the acknowledgment above or a similar introduction was missing from Footnote 65. Next, petitioners also point out that the following eight sentences and their accompanying footnotes appear in text on pages 30-32 of the *Vinuya* decision. x x x Admittedly, the *Vinuya* decision lifted the above, including their footnotes, from Criddle-Descent's article, *A Fiduciary Theory of Jus Cogens*. Criddle-Descent's footnotes were carried into the *Vinuya* decision's own footnotes but no attributions were made to the two authors in those footnotes. Unless amply explained, the above lifting from the works of Ellis and Criddle-Descent could be construed as plagiarism. But one of Justice Del Castillo's researchers, a court-employed attorney, explained how she accidentally deleted the attributions, originally planted in the beginning drafts of her report to him, which report eventually became the working draft of the decision. She said that, for most parts, she did her research electronically. For international materials, she sourced these mainly from Westlaw, an online research service for legal and law-related materials to which the Court subscribes. x x x Justice Del Castillo's researcher showed the Committee the early drafts of her report in the *Vinuya* case and these included the passages lifted from the separate articles of Criddle-Descent and of Ellis with proper attributions to these authors. But, as it happened, in the course of editing and cleaning up her draft, the researcher accidentally deleted the attributions. The Court adopts the Committee's finding that the researcher's explanation regarding the accidental removal of proper attributions to the three authors is credible. Given the operational properties of the Microsoft program in use by the Court, the accidental decapitation of attributions to sources of research materials is not remote.

**6. ID.; ID.; ID.; ID.; ID.; NEITHER JUSTICE DEL CASTILLO NOR HIS RESEARCHER HAD A MOTIVE TO OMIT ATTRIBUTION TO HIGHLY RESPECTABLE AUTHORS**

**WHEN THE DECISION CITES AN ABUNDANCE OF OTHER SOURCES; CASE AT BAR. —** Notably, neither Justice Del Castillo nor his researcher had a motive or reason for omitting attribution for the lifted passages to Criddle-Descent or to Ellis. The latter authors are highly respected professors of international law. The law journals that published their works have exceptional reputations. It did not make sense to intentionally omit attribution to these authors when the decision cites an abundance of other sources. Citing these authors as the sources of the lifted passages would enhance rather than diminish their informative value. Both Justice Del Castillo and his researcher gain nothing from the omission. Thus, the failure to mention the works of Criddle-Decent and Ellis was unquestionably due to inadvertence or pure oversight.

**7. ID.; ID.; ID.; ID.; ID.; ID.; PLAGIARISM IS ESSENTIALLY A FORM OF FRAUD WHERE INTENT TO DECEIVE IS INHERENT; ERRORS HAVE REASONABLE EXPLANATIONS IN CASE AT BAR. —** Petitioners of course insist that intent is not material in committing plagiarism since all that a writer has to do, to avoid the charge, is to enclose lifted portions with quotation marks and acknowledge the sources from which these were taken. Petitioners point out that the Court should apply to this case the ruling in *University of the Philippines Board of Regents v. Court of Appeals and Arokiaswamy William Margaret Celine*. They argue that standards on plagiarism in the academe should apply with more force to the judiciary. But petitioners' theory ignores the fact that plagiarism is essentially a form of fraud where intent to deceive is inherent. Their theory provides no room for errors in research, an unrealistic position considering that there is hardly any substantial written work in any field of discipline that is free of any mistake. The theory places an automatic universal curse even on errors that, as in this case, have reasonable and logical explanations.

**8. ID.; ID.; ID.; ID.; ID.; ID.; THE TEXT AND ITS FOOTNOTE REFERENCE GAVE NO IMPRESSION THAT THE PASSAGES WERE CREATIONS OF JUSTICE DEL CASTILLO; CASE AT BAR. —** The Court also adopts the Committee's finding that the omission of attributions to Criddle-Descent and Ellis did not bring about an impression that Justice Del Castillo himself created the passages that he lifted from their published articles. That he merely got those passages from others remains self-

evident, despite the accidental deletion. The fact is that he still imputed the passages to the sources from which Criddle-Descent and Ellis borrowed them in the first place. x x x Although the unintended deletion severed the passage's link to Tolentino, the passage remains to be attributed to Von Tuhr and Valverde, the original sources that Tolentino himself cites. The text and its footnote reference cancel out any impression that the passage is a creation of researcher X. It is the same with the passages from Criddle-Descent and Ellis. Because such passages remained attributed by the footnotes to the authors' original sources, the omission of attributions to Criddle-Descent and Ellis gave no impression that the passages were the creations of Justice Del Castillo. This wholly negates the idea that he was passing them off as his own thoughts.

**9. ID.; ID.; ID.; ID.; ID.; THE JUDICIAL SYSTEM IS BASED ON THE DOCTRINE OF *STARE DECISIS*, WHICH ENCOURAGES COURTS TO CITE HISTORICAL LEGAL DATA, PRECEDENTS, AND RELATED STUDIES IN THEIR DECISIONS. —** True the subject passages in this case were reproduced in the *Vinuya* decision without placing them in quotation marks. But such passages are much unlike the creative line from Robert Frost, "The woods are lovely, dark, and deep, but I have promises to keep, and miles to go before I sleep, and miles to go before I sleep." The passages here consisted of common definitions and terms, abridged history of certain principles of law, and similar frequently repeated phrases that, in the world of legal literature, already belong to the public realm. To paraphrase Bast and Samuels, while the academic publishing model is based on the originality of the writer's thesis, the judicial system is based on the doctrine of *stare decisis*, which encourages courts to cite historical legal data, precedents, and related studies in their decisions. The judge is not expected to produce original scholarship in every respect. The strength of a decision lies in the soundness and general acceptance of the precedents and long held legal opinions it draws from.

**10. ID.; ID.; ID.; ID.; ID.; LIFTED PASSAGES FROM TAMS, CRIDDLE-DESCENT, AND ELLIS PROVIDED MERE BACKGROUND FACTS THAT ESTABLISHED THE STATE OF INTERNATIONAL LAW AT VARIOUS STAGES OF ITS DEVELOPMENT; NO "TWISTING" OF INTENDED**

**MESSAGES IN CASE AT BAR. —** Petitioners allege that the decision twisted the passages from Tams, Criddle-Descent, and Ellis. The Court adopts the Committee's finding that this is not so. Indeed, this allegation of twisting or misrepresentation remains a mystery to the Court. To twist means "to distort or pervert the meaning of." For example, if one lifts the lyrics of the National Anthem, uses it in his work, and declares that Jose Palma who wrote it "did not love his country," then there is "twisting" or misrepresentation of what the anthem's lyrics said. Here, nothing in the *Vinuya* decision said or implied that, based on the lifted passages, authors Tams, Criddle-Descent, and Ellis supported the Court's conclusion that the Philippines is not under any obligation in international law to espouse Vinuya *et al.'s* claims. The fact is that, **first**, since the attributions to Criddle-Descent and Ellis were accidentally deleted, it is impossible for any person reading the decision to connect the same to the works of those authors as to conclude that in writing the decision Justice Del Castillo "twisted" their intended messages. And, **second**, the lifted passages provided mere background facts that established the state of international law at various stages of its development. These are neutral data that could support conflicting theories regarding whether or not the judiciary has the power today to order the Executive Department to sue another country or whether the duty to prosecute violators of international crimes has attained the status of *jus cogens*. Considering how it was impossible for Justice Del Castillo to have twisted the meaning of the passages he lifted from the works of Tams, Criddle-Descent, and Ellis, the charge of "twisting" or misrepresentation against him is to say the least, unkind. To be more accurate, however, the charge is reckless and obtuse.

**11. JUDICIAL ETHICS; JUDGES; MISCONDUCT; ONLY ERRORS THAT ARE TAINTED WITH FRAUD, CORRUPTIONS, OR MALICE ARE SUBJECT OF DISCIPLINARY ACTION; CASE AT BAR. —** On occasions judges and justices have mistakenly cited the wrong sources, failed to use quotation marks, inadvertently omitted necessary information from footnotes or endnotes. But these do not, in every case, amount to misconduct. Only errors that are tainted with fraud, corruption, or malice are subject of disciplinary action. This is not the case here. Justice Del Castillo's acts or omissions were not shown to have been impelled by any of such disreputable motives. If

the rule were otherwise, no judge or justice, however competent, honest, or dedicated he may be, can ever hope to retire from the judiciary with an unblemished record.

**12. ID.; ID.; ID.; NO INEXCUSABLE NEGLIGENCE; ASSIGNING CASES FOR STUDY TO A RESEARCHER WITH THE *PONENTE* MAINTAINING CONTROL OF THE WRITING OF THE DECISION, PROPER; CASE AT BAR. —** Finally, petitioners assert that, even if they were to concede that the omission was the result of plain error, Justice Del Castillo is nonetheless guilty of gross inexcusable negligence. They point out that he has full control and supervision over his researcher and should not have surrendered the writing of the decision to the latter. But this assumes that Justice Del Castillo abdicated the writing of the *Vinuya* decision to his researcher, which is contrary to the evidence adduced during the hearing. As his researcher testified, the Justice set the direction that the research and study were to take by discussing the issues with her, setting forth his position on those issues, and reviewing and commenting on the study that she was putting together until he was completely satisfied with it. In every sense, Justice Del Castillo was in control of the writing of the report to the Court, which report eventually became the basis for the decision, and determined its final outcome. Assigning cases for study and research to a court attorney, the equivalent of a "law clerk" in the United States Supreme Court, is standard practice in the high courts of all nations. This is dictated by necessity. With about 80 to 100 cases assigned to a Justice in our Court each month, it would be truly senseless for him to do all the studies and research, going to the library, searching the internet, checking footnotes, and watching the punctuations. If he does all these by himself, he would have to allocate at least one to two weeks of work for each case that has been submitted for decision. The wheels of justice in the Supreme Court will grind to a halt under such a proposition. What is important is that, in this case, Justice Del Castillo retained control over the writing of the decision in the *Vinuya* case without, however, having to look over his researcher's shoulder as she cleaned up her draft report to ensure that she hit the right computer keys. The Justice's researcher was after all competent in the field of assignment given her.

**SERENO*, J., dissenting opinion:***

**1. COMMERCIAL LAW; INTELLECTUAL PROPERTY; PLAGIARISM; EXCUSING LACK OF ATTRIBUTION TO AUTHORS DUE TO EDITORIAL ERRORS AND LACK OF MALICIOUS INTENT TO APPROPRIATE RENDERS MEANINGLESS THE LEGAL PROVISION ON INFRINGEMENT OF COPYRIGHT; CASE AT BAR.—** What is black can be called "white" but it cannot turn white by the mere calling. The unfortunate ruling of the majority Decision that no plagiarism was committed stems from its failure to distinguish between the determination of the objective, factual existence of plagiarism in the *Vinuya* decision and the determination of the liability that results from a finding of plagiarism. Specifically, it made "malicious intent," which heretofore had not been relevant to a finding of plagiarism, an essential element. The majority Decision will thus stand against the overwhelming conventions on what constitutes plagiarism. In doing so, the Decision has created unimaginable problems for Philippine academia, which will from now on have to find a disciplinary response to plagiarism committed by students and researchers on the justification of the majority Decision. It has also undermined the protection of copyrighted work by making available to plagiarists "lack of malicious intent" as a defense to a charge of violation of copy or economic rights of the copyright owner committed through lack of attribution. Under Section 184 of R.A. 8293 ("An Act Describing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for Its Powers and Functions, and for Other Purposes"), or the Intellectual Property Code of the Philippines, there is no infringement of copyright in the use of another's work in: (b) the making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: **Provided that the source and the name of the author, if appearing on the work, are mentioned.** Because the majority Decision has excused the lack of attribution to the complaining authors in the *Vinuya* decision to editorial errors and lack of malicious intent to appropriate – and that therefore there was no plagiarism — lack of intent to infringe copyright in the case of lack of attribution may now also become a defense, rendering

the above legal provision meaningless. x x x Unless reconsidered, this Court would unfortunately be remembered as the Court that made "malicious intent" an indispensable element of plagiarism and that made "malicious intent" an indispensable element of plagiarism and that made computer - keying errors an exculpatory fact in charges of plagiarism, without clarifying whether its ruling applies only to situations of judicial decision-making or to other written intellectual activity. It will also weaken this Court's disciplinary authority—the essence of which proceeds from its moral authority—over the bench and bar. In a real sense, this Court has rendered tenuous its ability to positively educate and influence the future of intellectual and academic discourse.

**2. ID.; ID.; ID.; FORMS THEREOF; HOW COMMITTED.—** There are many ways by which plagiarism can be committed. For the purpose of this analysis, we used the standard reference book prescribed for Harvard University students, "Writing with Sources" by Gordon Harvey. Harvey identifies four forms of plagiarism: (a) uncited data or information; (b) an uncited idea, whether a specific claim or general concept; (c) an unquoted but verbatim phrase or passage; and (d) an uncited structure or organizing strategy. He then explains how each form or mode of plagiarism is committed. Plagiarism is committed in mode (a) by "plagiarizing information that is not common knowledge." Mode (b) is committed when "distinctive ideas are plagiarized," "even though you present them in a different order and in different words, because they are uncited." Even if there has been a prior citation, succeeding appropriations of an idea to make it appear as your own is plagiarism, because the "[previous] citation in [an earlier] passage is a deception." Mode (c) is committed when "you x x x borrowed several distinctive phrases verbatim, without quotation marks x x x" Mode (d) is committed when, though the words and details are original, "(y)ou have, however, taken the structural framework or outline directly from the source passage. x x x even though, again, your language differs from your source and your invented examples are original." These forms of plagiarism can exist simultaneously in one and the same passage. There may be a complete failure to use quotation marks in one part of the sentence or paragraph while combining that part with phrases employing an uncited structure or organizing strategy. There may be patchwork plagiarizing committed by

collating different works or excerpts from the same work without proper attribution. These acts of plagiarism can also be committed in footnotes in the same way and at the same degree of unacceptability as plagiarized passages in the body. This is especially frowned upon in footnotes that are discursive or "content" footnotes or endnotes. Harvey explains that a discursive footnote or endnote is "a note that includes comments, not just publication information x x x when you want to tell your reader something extra to the strict development of your argument, or incorporate extra information about sources."

**3. ID.; ID.; ID.; ID.; ID.; EVIDENCE SUFFICIENT FOR THE DETERMINATION OF PLAGIARISM IN THE *VINUYA* DECISION; CASE AT BAR.—** Below are violations of the existing rules against plagiarism that can be found in the *Vinuya* decision. x x x The text of the Decision itself reveals the evidence of plagiarism. The tearful apology of the legal researcher to the family of the *ponente* and her acknowledgment of the gravity of the act of omitting attributions is an admission that something wrong was committed. Her admission that the correct attributions went missing in the process of her work is an admission of plagiarism. The evidence in the text of the *Vinuya* Decision and the acknowledgment by the legal researcher are sufficient for the determination of plagiarism. x x x The suspect portions of the majority decision start from the discursive footnote of the first full paragraph of page 27. In that paragraph, the idea sought to be developed was that while rape and sexual slavery, may be morally reprehensible and impermissible by international legal norms, petitioners have failed to make the logical leap to conclude that the Philippines is thus under international legal duty to prosecute Japan for the said crime. The plagiarized work found in discursive footnote 65 largely consists of the exposition by Mr. Ellis of the development of the concept of rape as an international crime. The impression obtained by any reader is that the *ponente* has much to say about how this crime evolved in international law, and that he is an expert on this matter. There are two intervening paragraphs before the next suspect portion of the decision. The latter starts from the second paragraph on page 30 and continues all the way up to the first paragraph of page 32. The discussion on the *erga omnes* obligation of states almost cannot exist, or at the very least cannot be sustained, without the plagiarized works

of Messrs. Tams, Criddle and Decent-Fox. There is basis to say that the plagiarism of this portion is significant.

**4. ID.; ID.; ID.; ID.; ID.; ID.; PROCEDURE IN ELECTRONICALLY GENERATED WRITINGS AIDED BY ELECTRONIC RESEARCH; CASE AT BAR.—** Contrary to the view of my esteemed colleagues, the above is not a fair presentation of what happens in electronically generated writings aided by electronic research. **First,** for a decision to make full attribution for lifted passages, one starts with block quote formatting or the "keying-in" of quotation marks at the beginning and at the end of the lifted passages. These keyed-in computer commands are **not** easily accidentally deleted, but should be **deliberately imputted** where there is an intention to quote and attribute. **Second**, a beginning acknowledgment or similar introduction to a lengthy passage copied verbatim should **not** be accidentally deleted; it must be **deliberately placed**. **Third**, the above explanation regarding the lines quoted in A.1 in the majority Decision may touch upon what happened in incident A.1, but it does not relate to what happened in incidents B.1 to C.6 of the Tables of Comparison, which are wholesale lifting of excerpts from both the body and the footnotes of the referenced works, without any attribution, specifically to the works of Criddle & Fox-Decent and of Ellis. While mention was made of Tams's work, no mention was made at all of the works of Criddle & Fox-Decent and of Ellis even though the discussions and analyses in their discursive footnotes were used wholesale. **Fourth**, the researcher's explanation regarding the accidental deletion of 2 footnotes out of 119 does not plausibly account for the extensive amount of text used with little to no modifications from the works of Criddle & Fox-Decent and Ellis. As was presented in Tables B and C, copied text occurs in 22 instances in pages 27, 31, and 32 of the *Vinuya* decision. All these instances of non-attribution cannot be remedied by the reinstatement of 2 footnotes. **Fifth**, the mention of Tams in "See Tams, Enforcing Obligations *Erga omnes* in International Law (2005)" in footnote 69 of the *Vinuya* decision was not a mere insufficiency in "clarity of writing," but a case of plagiarism under the rule prohibiting the use of misleading citations. **Sixth**, the analogy that was chosen— that of a carpenter who discards materials that do not fit into his carpentry work — is completely inappropriate. In the scheme of "cutting and pasting" that the researcher did during her work, it is standard practice for the

original sources of the downloaded and copied materials to be regarded as integral parts of the excerpts, not extraneous or ill-fitting. A computer-generated document can accommodate as many quotation marks, explanatory notes, citations and attributions as the writer desires and in multiple places. The limits of most desktop computer drives, even those used in the Supreme Court, are in magnitudes of gigabytes and megabytes, capable of accommodating 200 to 400 books per gigabyte (with each book just consuming roughly 3 to 5 megabytes). The addition of a footnote to the amount of file space taken up by an electronic document is practically negligible. It is not as if the researcher lacked any electronic space; there was simply no attribution. **Seventh**, contrary to what is implied in the statement on Microsoft Word's lack of an alarm and in paragraph 4 of the decretal portion of the majority Decision, no software exists that will automatically type in quotation marks at the beginning and end of a passage that was lifted verbatim; these attribution marks must be made with deliberate effort by the human researcher. Nor can a software program generate the necessary citations without input from the human researcher. Neither is there a built-in software alarm that sounds every time attribution marks or citations are deleted. The best guarantee for works of high intellectual integrity is consistent, ethical practice in the writing habits of court researchers and judges. All lawyers are supposed to be knowledgeable on the standard of ethical practice, if they took their legal research courses in law school and their undergraduate research courses seriously. This knowledge can be easily picked up and updated by browsing many free online sources on the subject of writing standards. In addition, available on the market are software programs that can detect some, but not all, similarities in the phraseology of a work-in-progress with those in selected published materials; however, these programs cannot supply the citations on their own. Technology can help diminish instances of plagiarism by allowing supervisors of researchers to make partial audits of their work, but it is still the human writer who must decide to give the proper attribution and act on this decision.

**5. ID.; ID.; ID.; JUDICIAL PLAGIARISM; ARISES WHEN JUDGES AUTHOR OPINIONS THAT EMPLOY MATERIALS FROM COPYRIGHTED SOURCES, SUCH AS LAW JOURNALS OR BOOKS, BUT NEGLECT TO GIVE CREDIT TO THE**

**AUTHOR. —** If the question of plagiarism, then, turns on a failure of attribution, judicial plagiarism in the case at bar "arises when judges author opinions that employ materials from copyrighted sources such as law journals or books, but neglect to give credit to the author." Doing so effectively implies the staking of a claim on the copied work as the judge's own.

**6. ID.; ID.; ID.; ID.; MAY BE DONE THROUGH NEGLIGENCE OR RECKLESSNESS WITHOUT INTENT TO DECEIVE; CASE AT BAR. —** Note that there is no requirement of extent of copying or a minimum number of instances of unattributed usage for an act to be considered a plagiarist act, nor is the intent to deceive or to copy without attribution a prerequisite of plagiarism. In Dursht's exhaustive analysis of judicial plagiarism she cites the case of *Newman v. Burgin* wherein the court said that plagiarism may be done "through negligence or recklessness without intent to deceive." Dursht in addition notes that intent may also be taken as the intent to claim authorship of the copied work, whether or not there was intent to deceive, citing *Napolitano v. Trustees of Princeton Univ.* x x x While indeed the notion of having committed judicial plagiarism may be unsettling to contemplate, as it may raise in the mind of a judge the question of his or her own culpability, it is a grievous mistake to overlook the possibility of the commission of judicial plagiarism or the fact that judicial plagiarism is categorized by its very definition as a subset of plagiarism. That a judge, in lifting words from a source and failing to attribute said words to said source in the writing of a decision, committed specifically *judicial* plagiarism does not derogate from the nature of the act as a plagiarist act. Nor does any claim of inadvertence or lack of intent in the commission of a plagiarist act change the characterization of the act as plagiarism.

**7. ID.; ID.; ID.; ID.; ID.; TYPES OF JUDICIAL PLAGIARISM. —** George describes the following among the types of judicial plagiarism: "***Borrowed Text:*** When quoting a legal periodical, law review, treatise or other such source, the judicial writer must surround the borrowed text with quotation marks or use a block quote. x x x Additionally, the source should be referenced in the text. x x x Using another's language verbatim without using quotation marks or a block quote is intentional, as opposed to unintentional, plagiarism. ***Reference errors:*** The

judge may fail to put quotation marks around a clause, phrase or paragraph that is a direct quote from another's writing even though he cites the author correctly. This is plagiarism even though it may be inadvertent."

**8. ID.; ID.; ID.; A SERIOUS OFFENSE CLASSED AS "ACADEMIC DISHONESTY"; PENALTIES THEREFOR IN THE ACADEME.** — In the academe, plagiarism is generally dealt with severely when found out; many universities have policies on plagiarism detailing the sanctions that may be imposed on students who are found to have plagiarized in their coursework and other academic requirements. These run the gamut from an automatic failing grade in the course for which the offending work was submitted, or in more egregious cases, outright expulsion from the university. Sanctions for plagiarism in the academe operate through "the denial of certification or recognition of achievement" to the extent of rescinding or denying degrees. In the case of law students who do manage to obtain their degrees, their admission to the bar may be hindered due to questions about their "character or fitness to practice law." Indeed, plagiarism, due to the severity of the penalties it may incur, is often identified with the punishment of "academic death." The academe justifies the harshness of the sanctions it imposes with the seriousness of the offense: plagiarism is seen not only to undermine the credibility and importance of scholarship, but also to deprive the rightful author of what is often one of the most valuable currencies in the academe: credit for intellectual achievement — an act of debasing the coinage, as it were. Thus the rules of many academic institutions sanctioning plagiarism as a violation of academic ethics and a serious offense often classed under the broader heading of "academic dishonesty."

**9. ID.; ID.; ID.; JUDICIAL PLAGIARISM; LACK OF DEFINITIVENESS IN SANCTIONS THEREFOR; JUDGE'S NEED TO USE "THE LEGAL REASONING AND LANGUAGE" OF OTHERS FOR RESOLUTION OF THE DISPUTE DOES NOT NEGATE NEED FOR ATTRIBUTION.** — The imposition of sanctions for acts of judicial plagiarism, however, is not as clear-cut. While George recognizes the lack of attribution as the fundamental mark of judicial plagiarism, she notes in the same breath that the act is "without legal sanction." Past instances of censure notwithstanding (as in examples of

condemnation of plagiarism cited by Lebovits *et al.*, most particularly the censure of the actions of the judge who plagiarized a law-review article in *Brennan;* the admonition issued by the Canadian Federal Court of Appeal in the case of *Apotex*) there is still no strictly prevailing consensus regarding the need or obligation to impose sanctions on judges who have committed acts of judicial plagiarism. This may be due in a large part to the absence of expectations of originality in the decisions penned by judges, as courts are required to "consider and usually. x x x follow precedent." In so fulfilling her obligations, it may become imperative for the judge to use "the legal reasoning and language [of others, *e.g.*, a supervising court or a law review article] for resolution of the dispute." Although these obligations of the judicial writer must be acknowledged, care should be taken to consider that said obligations do not negate the need for attribution so as to avoid the commission of judicial plagiarism. Nor do said obligations diminish the fact that judicial plagiarism "detracts directly from the legitimacy of the judge's ruling and indirectly from the judiciary's legitimacy" or that it falls far short of the high ethical standards to which judges must adhere. The lack of definitiveness in sanctions for judicial plagiarism may also be due to the reluctance of judges themselves to confront the issue of plagiarism in the context of judicial writing; the apprehension caused by "feelings of guilt" being due to "the possibility that plagiarism has unknowingly or intentionally been committed" and a "traditional" hesitance to consider plagiarism as "being applicable to judicial writings."

**10. ID.; ID.; ID.; ID.; IT IS NOT HYPOCRISY TO MAKE A FINDING OF PLAGIARISM WHEN PLAGIARISM EXISTS; CASE AT BAR. —** It is not hypocrisy, contrary to what is implied in a statement in the majority Decision, to make a finding of plagiarism when plagiarism exists. To conclude thus is to condemn wholesale all the academic thesis committees, student disciplinary tribunals and editorial boards who have made it their business to ensure that no plagiarism is tolerated in their institutions and industry. In accepting those review and quality control responsibilities, they are not making themselves out to be error-free, but rather, they are exerting themselves to improve the level of honesty in the original works generated in their institution so that the coinage and currency of intellectual life — originality and the attribution of originality

— is maintained. The incentive system of intellectual creation is made to work so that the whole society benefits from the encouraged output.

**11. ID.; ID.; ID.; ID.; ANALYSIS CONFINED WHERE JUDGE ISSUES A DECISION THAT PLAGIARIZES LAW REVIEW ARTICLES, NOT TO HIS COPYING OF PRECEDENTS OR PARTS OF THE PARTIES' PLEADINGS; CASE AT BAR. —** In a certain sense, there should have been less incentive to plagiarize law review articles because the currency of judges is *stare decisis*. One wonders how the issue should have been treated had what was plagiarized been a court ruling, but that is not at issue here. The analysis in this opinion is therefore confined to the peculiar situation of a judge who issues a decision that plagiarizes law review articles, not to his copying of precedents or parts of the pleadings of the parties to a case. As earlier said, a determination of the existence of plagiarism in decision-making is not conclusive on the disciplinary measure to be imposed. Different jurisdictions have different treatments. At the very least however, the process of rectification must start from an acknowledgment and apology for the offense. After such have been done, then consideration of the circumstances that mitigate the offense are weighed. But not before then.

## D E C I S I O N

***PER CURIAM:***

This case is concerned with charges that, in preparing a decision for the Court, a designated member plagiarized the works of certain authors and twisted their meanings to support the decision.

### The Background Facts

Petitioners Isabelita C. Vinuya and about 70 other elderly women, all members of the Malaya Lolas Organization, filed with the Court in G.R. No. 162230 a special civil action of *certiorari* with application for preliminary mandatory injunction against the Executive Secretary, the Secretary of Foreign Affairs, the Secretary of Justice, and the Office of the Solicitor General.

Petitioners claimed that in destroying villages in the Philippines during World War II, the Japanese army systematically raped them and a number of other women, seizing them and holding them in houses or cells where soldiers repeatedly ravished and abused them.

Petitioners alleged that they have since 1998 been approaching the Executive Department, represented by the respondent public officials, requesting assistance in filing claims against the Japanese military officers who established the comfort women stations. But that Department declined, saying that petitioners' individual claims had already been fully satisfied under the Peace Treaty between the Philippines and Japan.

Petitioners wanted the Court to render judgment, compelling the Executive Department to espouse their claims for official apology and other forms of reparations against Japan before the International Court of Justice and other international tribunals.

On April 28, 2010, the Court rendered judgment dismissing petitioners' action. Justice Mariano C. del Castillo wrote the decision for the Court. The Court essentially gave two reasons for its decision: it cannot grant the petition because, **first**, the Executive Department has the exclusive prerogative under the Constitution and the law to determine whether to espouse petitioners' claim against Japan; and, **second**, the Philippines is not under any obligation in international law to espouse their claims.

On June 9, 2010, petitioners filed a motion for reconsideration of the Court's decision. More than a month later on July 18, 2010, counsel for petitioners, Atty. Herminio Harry Roque, Jr., announced in his online blog that his clients would file a supplemental petition "detailing plagiarism committed by the court" under the **second** reason it gave for dismissing the petition and that "these stolen passages were also twisted to support the court's erroneous conclusions that the Filipino comfort women of World War Two have no further legal remedies." The media gave publicity to Atty. Roque's announcement.

On July 19, 2010, petitioners filed the supplemental motion for reconsideration that Atty. Roque announced. It accused Justice Del Castillo of "manifest intellectual theft and outright plagiarism"[1] when he wrote the decision for the Court and of "twisting the true intents of the plagiarized sources … to suit the arguments of the assailed Judgment."[2] They charged Justice Del Castillo of copying without acknowledgement certain passages from three foreign articles:

a. *A Fiduciary Theory of Jus Cogens* by Evan J. Criddle and Evan Fox-Descent, Yale Journal of International Law (2009);

b. *Breaking the Silence: Rape as an International Crime* by Mark Ellis, Case Western Reserve Journal of International Law (2006); and

c. *Enforcing Erga Omnes Obligations* by Christian J. Tams, Cambridge University Press (2005).

Petitioners claim that the integrity of the Court's deliberations in the case has been put into question by Justice Del Castillo's fraud. The Court should thus "address and disclose to the public the truth about the manifest intellectual theft and outright plagiarism"[3] that resulted in gross prejudice to the petitioners.

Because of the publicity that the supplemental motion for reconsideration generated, Justice Del Castillo circulated a letter to his colleagues, subsequently verified, stating that when he wrote the decision for the Court he had the intent to attribute all sources used in it. He said in the pertinent part:

**It must be emphasized that there was every intention to attribute all sources, whenever due. At no point was there ever any malicious intent to appropriate another's work as our own. We recall that this *ponencia* was thrice included in the Agenda of the Court *en banc*. It was deliberated upon during the Baguio session on April 13, 2010, April 20, 2010 and in Manila on April 27, 2010. Each**

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[1] Supplemental Motion for Reconsideration, petitioner's Exhibit A, p. 5.

[2] *Id.* at 3.

[3] Supplemental Motion for Reconsideration, *supra* note 1, at 5.

**time, suggestions were made which necessitated major revisions in the draft. Sources were re-studied, discussions modified, passages added or deleted. The resulting decision comprises 34 pages with 78 footnotes.**

**x x x x x x x x x**

**As regards the claim of the petitioners that the concepts as contained in the above foreign materials were "twisted," the same remains their opinion which we do not necessarily share.**[4]

On July 27, 2010, the Court *En Banc* referred the charges against Justice Del Castillo to its Committee on Ethics and Ethical Standards, chaired by the Chief Justice, for investigation and recommendation. The Chief Justice designated retired Justice Jose C. Vitug to serve as consultant of the Committee. He graciously accepted.

On August 2, 2010, the Committee directed petitioners to comment on Justice Del Castillo's verified letter. When this was done, it set the matter for hearing.

In the meantime, on July 19, 2010, Evan Criddle wrote on his blog that he and his co-author Evan Fox-Descent (referred to jointly as Criddle-Descent) learned of alleged plagiarism involving their work but Criddle's concern, after reading the supplemental motion for reconsideration, was the Court's conclusion that prohibitions against sexual slavery are not *jus cogens* or internationally binding norms that treaties cannot diminish.

On July 23, 2010, Dr. Mark Ellis wrote the Court expressing concern that in mentioning his work, the Court "may have misread the argument [he] made in the article and employed them for cross purposes." Dr. Ellis said that he wrote the article precisely to argue for appropriate legal remedy for victims of war crimes.

On August 8, 2010, after the referral of the matter to the Committee for investigation, the Dean of the University of the Philippines (U.P.) College of Law publicized a Statement from

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[4] Justice Del Castillo's Verified Letter, p. 3, Exhibit G of the petitioners.

his faculty, claiming that the *Vinuya* decision was "an extraordinary act of injustice" and a "singularly reprehensible act of dishonesty and misrepresentation by the Highest Court of the land." The statement said that Justice Del Castillo had a "deliberate intention to appropriate the original authors' work," and that the Court's decision amounted to "an act of intellectual fraud by copying works in order to mislead and deceive."[5]

On August 18, 2010 Mr. Christian J. Tams wrote Chief Justice Renato C. Corona that, although relevant sentences in the Court's decision were taken from his work, he was given generic reference only in the footnote and in connection with a citation from another author (Bruno Simma) rather than with respect to the passages taken from his work. He thought that the form of referencing was inappropriate. Mr. Tams was also concerned that the decision may have used his work to support an approach to *erga omnes* concept (obligations owed by individual States to the community of nations) that is not consistent with what he advocated.

On August 26, 2010, the Committee heard the parties' submissions in the summary manner of administrative investigations. Counsels from both sides were given ample time to address the Committee and submit their evidence. The Committee queried them on these.

Counsels for Justice Del Castillo later asked to be heard with the other parties not in attendance so they could make submissions that their client regarded as sensitive and confidential, involving the drafting process that went into the making of the Court's decision in the *Vinuya* case. Petitioners' counsels vigorously objected and the Committee sustained the objection. After consulting Justice Del Castillo, his counsels requested the Committee to hear the Justice's court researcher, whose name need not be mentioned here, explain the research work that went into the making of the decision in the *Vinuya* case. The Committee granted the request.

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[5] Statement of the University of the Philippines College of Law Faculty dated July 27, 2010, Exhibit J of the petitioners.

The researcher demonstrated by Power Point presentation how the attribution of the lifted passages to the writings of Criddle-Descent and Ellis, found in the beginning drafts of her report to Justice Del Castillo, were unintentionally deleted. She tearfully expressed remorse at her "grievous mistake" and grief for having "caused an enormous amount of suffering for Justice Del Castillo and his family."[6]

On the other hand, addressing the Committee in reaction to the researcher's explanation, counsel for petitioners insisted that lack of intent is not a defense in plagiarism since all that is required is for a writer to acknowledge that certain words or language in his work were taken from another's work. Counsel invoked the Court's ruling in *University of the Philippines Board of Regents v. Court of Appeals and Arokiaswamy William Margaret Celine*,[7] arguing that standards on plagiarism in the academe should apply with more force to the judiciary.

After the hearing, the Committee gave the parties ten days to file their respective memoranda. They filed their memoranda in due course. Subsequently after deliberation, the Committee submitted its unanimous findings and recommendations to the Court.

## The Issues

This case presents two issues:

1. Whether or not, in writing the opinion for the Court in the *Vinuya* case, Justice Del Castillo plagiarized the published works of authors Tams, Criddle-Descent, and Ellis.

2. Whether or not Justice Del Castillo twisted the works of these authors to make it appear that such works supported the Court's position in the *Vinuya* decision.

## The Court's Rulings

Because of the pending motion for reconsideration in the *Vinuya* case, the Court like its Committee on Ethics and Ethical

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[6] Transcript of Stenographic Notes taken on August 26, 2010, p. 31.

[7] G.R. No. 134625, August 31, 1999, 313 SCRA 404.

Standards will purposely avoid touching the merits of the Court's decision in that case or the soundness or lack of soundness of the position it has so far taken in the same. The Court will deal, not with the essential merit or persuasiveness of the foreign author's works, but how the decision that Justice Del Castillo wrote for the Court appropriated parts of those works and for what purpose the decision employed the same.

At its most basic, plagiarism means the theft of another person's language, thoughts, or ideas. To plagiarize, as it is commonly understood according to Webster, is "to take (ideas, writings, *etc*.) from (another) and pass them off as one's own."[8] The passing off of the work of another as one's own is thus an indispensable element of plagiarism.

**The Passages from Tams**

Petitioners point out that the *Vinuya* decision lifted passages from Tams' book, *Enforcing Erga Omnes Obligations in International Law (2006)* and used them in Footnote 69 with what the author thought was a mere generic reference. But, although Tams himself may have believed that the footnoting in this case was not "an appropriate form of referencing,"[9] he and petitioners cannot deny that the decision did attribute the source or sources of such passages. Justice Del Castillo did not pass off Tams' work as his own. The Justice primarily attributed the ideas embodied in the passages to Bruno Simma, whom Tams himself credited for them. Still, Footnote 69 mentioned, apart from Simma, Tams' article as another source of those ideas.

The Court believes that whether or not the footnote is sufficiently detailed, so as to satisfy the footnoting standards of counsel for petitioners is not an ethical matter but one concerning clarity of writing. The statement "*See* Tams, Enforcing Obligations *Erga Omnes* in International Law (2005)" in the *Vinuya* decision is an attribution no matter if Tams thought

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[8] Webster's New World College Dictionary, Third Edition, Macmillan USA, p. 1031.

[9] Exhibit I for the petitioners.

that it gave him somewhat less credit than he deserved. Such attribution altogether negates the idea that Justice Del Castillo passed off the challenged passages as his own.

That it would have been better had Justice Del Castillo used the introductory phrase "*cited in*" rather than the phrase "*See*" would make a case of mere inadvertent slip in attribution rather than a case of "manifest intellectual theft and outright plagiarism." If the Justice's citations were imprecise, it would just be a case of bad footnoting rather than one of theft or deceit. If it were otherwise, many would be target of abuse for every editorial error, for every mistake in citing pagination, and for every technical detail of form.

**The Passages from Ellis and Criddle-Descent**

Petitioners also attack the Court's decision for lifting and using as footnotes, without attribution to the author, passages from the published work of Ellis. The Court made the following statement on page 27 of its decision, marked with Footnote 65 at the end:

> **We fully agree that rape, sexual slavery, torture, and sexual violence are morally reprehensible as well as legally prohibited under contemporary international law. 65 x x x**

Footnote 65 appears down the bottom of the page. Since the lengthy passages in that footnote came almost verbatim from Ellis' article,[10] such passages ought to have been introduced by an acknowledgement that they are from that article. The footnote could very well have read:

> **65 In an article, *Breaking the Silence: Rape as an International Crime*, Case Western Reserve Journal of International Law (2006), Mark Ellis said:** The concept of rape as an international crime is relatively new. This is not to say that rape has never been historically prohibited, particularly in war. But modern-day sensitivity to the crime of rape did not emerge until after World War II. In the Nuremberg

[10] *Breaking the Silence of Rape as an International Crime*, 38 Case W. RES. J. INT'L. L. 225 (2006).

Charter, the word rape was not mentioned. The article on crimes against humanity explicitly set forth prohibited acts, but rape was not mentioned by name. (For example, the Treaty of Amity and Commerce between Prussia and the United States provides that in time of war all women and children "shall not be molested in their persons." The Treaty of Amity and Commerce, Between his Majesty the King of Prussia and the United States of America, Art. 23, Sept. 10, 1785, U.S.-Pruss., 8 TREATIES & OTHER INT'L AGREEMENTS OF THE U.S. 78, 85. The 1863 Lieber Instructions classified rape as a crime of "troop discipline." (Mitchell, *The Prohibition of Rape in International Humanitarian Law as a Norm of Jus cogens: Clarifying the Doctrine, 15* DUKE J. COMP. INT'L. L. 219, 224). It specified rape as a capital crime punishable by the death penalty (*Id.* at 236). The 1907 Hague Convention protected women by requiring the protection of their "honour." ("Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected." Convention (IV) Respecting the Laws & Customs of War on Land, Art. 46, Oct. 18, 1907. General Assembly resolution 95 (I) of December 11, 1946 entitled, "Affirmation of the Principles of International Law recognized by the Charter of the Nürnberg Tribunal"; General Assembly document A/64/Add.1 of 1946; *See* Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279. Article 6(c) of the Charter established crimes against humanity as the following:

> CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the Jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

The Nuremberg Judgment did not make any reference to rape and rape was not prosecuted. (Judge Gabrielle Kirk McDonald, *The International Criminal Tribunals Crime and Punishment in the International Arena,7* ILSA J. Int'l. Comp. L. 667, 676.) However, International Military Tribunal for the Far East prosecuted rape crimes, even though its Statute did not explicitly criminalize rape. The Far East Tribunal held General Iwane Matsui, Commander Shunroku Hata and Foreign Minister Hirota criminally responsible for a series of crimes, including rape, committed by persons under

their authority. (THE TOKYO JUDGMENT: JUDGMENT OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST 445-54 (1977).

The first mention of rape as a specific crime came in December 1945 when Control Council Law No. 10 included the term rape in the definition of crimes against humanity. Law No. 10, adopted by the four occupying powers in Germany, was devised to establish a uniform basis for prosecuting war criminals in German courts. (Control Council for Germany, Law No. 10: Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, Dec. 20, 1945, 3 Official Gazette Control Council for Germany 50, 53 (1946))

The 1949 Geneva Convention Relative to the Treatment of Prisoners of War was the first modern-day international instrument to establish protections against rape for women. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, Art. 27, 6 U.S.T. 3316, 75 U.N.T.S. 287 (entry into force Oct. 20, 1950) [hereinafter Fourth Geneva Convention].Furthermore, the ICC, the ICTY, and the International Criminal Tribunal for Rwanda (ICTR) have significantly advanced the crime of rape by enabling it to be prosecuted as genocide, a war crime, and a crime against humanity.

But, as it happened, the acknowledgment above or a similar introduction was missing from Footnote 65.

Next, petitioners also point out that the following eight sentences and their accompanying footnotes appear in text on pages 30-32 of the *Vinuya* decision:

**x x x In international law, the term "*jus cogens*" (literally, "compelling law") refers to norms that command peremptory authority, superseding conflicting treaties and custom. *Jus cogens* norms are considered peremptory in the sense that they are mandatory, do not admit derogation, and can be modified only by general international norms of equivalent authority.[71]**

**Early strains of the *jus cogens* doctrine have existed since the 1700s,[72] but peremptory norms began to attract greater scholarly attention with the publication of Alfred von Verdross's influential 1937 article, Forbidden Treaties in International Law.[73] The recognition of *jus cogens* gained even more force in the 1950s and 1960s with the ILC's preparation of the Vienna Convention on the Law of Treaties (VCLT).[74] Though there was a consensus that**

**certain international norms had attained the status of *jus cogens*,[75] the ILC was unable to reach a consensus on the proper criteria for identifying peremptory norms.**

**After an extended debate over these and other theories of *jus cogens*, the ILC concluded ruefully in 1963 that "there is not as yet any generally accepted criterion by which to identify a general rule of international law as having the character of *jus cogens*."[76] In a commentary accompanying the draft convention, the ILC indicated that "the prudent course seems to be to x x x leave the full content of this rule to be worked out in State practice and in the jurisprudence of international tribunals."[77] Thus, while the existence of *jus cogens* in international law is undisputed, no consensus exists on its substance,[77] beyond a tiny core of principles and rules.[78]**

Admittedly, the *Vinuya* decision lifted the above, including their footnotes, from Criddle-Descent's article, *A Fiduciary Theory of Jus Cogens*.[11] Criddle-Descent's footnotes were carried into the *Vinuya* decision's own footnotes but no attributions were made to the two authors in those footnotes.

**The Explanation**

Unless amply explained, the above lifting from the works of Ellis and Criddle-Descent could be construed as plagiarism. But one of Justice Del Castillo's researchers, a court-employed attorney, explained how she accidentally deleted the attributions, originally planted in the beginning drafts of her report to him, which report eventually became the working draft of the decision. She said that, for most parts, she did her research electronically. For international materials, she sourced these mainly from Westlaw, an online research service for legal and law-related materials to which the Court subscribes.

In the old days, the common practice was that after a Justice would have assigned a case for study and report, the researcher would source his materials mostly from available law books and published articles on print. When he found a relevant item in a book, whether for one side of the issue or for the other,

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[11] 34 YALE J. INT'L. L. 331 (2009).

he would place a strip of paper marker on the appropriate page, pencil mark the item, and place the book on his desk where other relevant books would have piled up. He would later paraphrase or copy the marked out passages from some of these books as he typed his manuscript on a manual typewriter. This occasion would give him a clear opportunity to attribute the materials used to their authors or sources.

With the advent of computers, however, as Justice Del Castillo's researcher also explained, most legal references, including the collection of decisions of the Court, are found in electronic diskettes or in internet websites that offer virtual libraries of books and articles. Here, as the researcher found items that were relevant to her assignment, she downloaded or copied them into her "main manuscript," a smorgasbord plate of materials that she thought she might need. The researcher's technique in this case is not too far different from that employed by a carpenter. The carpenter first gets the pieces of lumber he would need, choosing the kinds and sizes suitable to the object he has in mind, say a table. When ready, he would measure out the portions he needs, cut them out of the pieces of lumber he had collected, and construct his table. He would get rid of the scraps.

Here, Justice Del Castillo's researcher did just that. She electronically "cut" relevant materials from books and journals in the Westlaw website and "pasted" these to a "main manuscript" in her computer that contained the issues for discussion in her proposed report to the Justice. She used the Microsoft Word program.[12] Later, after she decided on the general shape that her report would take, she began pruning from that manuscript those materials that did not fit, changing the positions in the general scheme of those that remained, and adding and deleting paragraphs, sentences, and words as her continuing discussions with Justice Del Castillo, her chief editor, demanded. Parenthetically, this is the standard scheme that computer-literate court researchers use everyday in their work.

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[12] Memorandum for Justice Del Castillo, paragraphs 25-35.

Justice Del Castillo's researcher showed the Committee the early drafts of her report in the *Vinuya* case and these included the passages lifted from the separate articles of Criddle-Descent and of Ellis with proper attributions to these authors. But, as it happened, in the course of editing and cleaning up her draft, the researcher accidentally deleted the attributions.

**First Finding**

The Court adopts the Committee's finding that the researcher's explanation regarding the accidental removal of proper attributions to the three authors is credible. Given the operational properties of the Microsoft program in use by the Court, the accidental decapitation of attributions to sources of research materials is not remote.

For most senior lawyers and judges who are not computer literate, a familiar example similar to the circumstances of the present case would probably help illustrate the likelihood of such an accident happening. If researcher X, for example, happens to be interested in "the inalienable character of juridical personality" in connection with an assignment and if the book of the learned Civilist, Arturo M. Tolentino, happens to have been published in a website, researcher X would probably show interest in the following passage from that book:

**xxx Both juridical capacity and capacity to act are not rights, but qualities of persons; hence, they cannot be alienated or renounced.15**

**xxx**

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**15 3 Von Tuhr 296; 1 Valverde 291.**

Because the sentence has a footnote mark (#15) that attributes the idea to other sources, it is evident that Tolentino did not originate it. The idea is not a product of his intellect. He merely lifted it from Von Tuhr and Valverde, two reputable foreign authors.

When researcher X copies and pastes the above passage and its footnote into a manuscript-in-the-making in his computer, the footnote number would, given the computer program in use, automatically change and adjust to the footnoting sequence of researcher X's manuscript. Thus, if the preceding footnote in the manuscript when the passage from Tolentino was pasted on it is 23, Tolentino's footnote would automatically change from the original Footnote 15 to Footnote 24.

But then, to be of use in his materials-gathering scheme, researcher X would have to tag the Tolentino passage with a short description of its subject for easy reference. A suitable subject description would be: "*The inalienable character of juridical personality*.**23**" The footnote mark, **23 From Tolentino**, which researcher X attaches to the subject tag, serves as reminder to him to attribute the passage in its final form to Tolentino. After the passage has been tagged, it would now appear like this:

***The inalienable character of juridical personality.*****23**

**xxx Both juridical capacity and capacity to act are not rights, but qualities of persons; hence, they cannot be alienated or renounced.24**

**xxx**

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**23 From Tolentino.**
**24 3 Von Tuhr 296; 1 Valverde 291.**

The tag is of course temporary and would later have to go. It serves but a marker to help researcher X maneuver the passage into the right spot in his final manuscript.

The mistake of Justice Del Castillo's researcher is that, after the Justice had decided what texts, passages, and citations were to be retained including those from Criddle-Descent and Ellis, and when she was already cleaning up her work and deleting all subject tags, she unintentionally deleted the footnotes that went with such tags—with disastrous effect.

To understand this, in Tolentino's example, the equivalent would be researcher X's removal during cleanup of the tag, "*The inalienable character of juridical personality*.**23**," by a simple "delete" operation, and the unintended removal as well of the accompanying footnote (#23). The erasure of the footnote eliminates the link between the lifted passage and its source, Tolentino's book. Only the following would remain in the manuscript:

**xxx Both juridical capacity and capacity to act are not rights, but qualities of persons; hence, they cannot be alienated or renounced.43**

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**43 3 Von Tuhr 296; 1 Valverde 291.**

As it happened, the Microsoft word program does not have a function that raises an alarm when original materials are cut up or pruned. The portions that remain simply blend in with the rest of the manuscript, adjusting the footnote number and removing any clue that what should stick together had just been severed.

This was what happened in the attributions to Ellis and Criddle-Descent. The researcher deleted the subject tags and, accidentally, their accompanying footnotes that served as reminder of the sources of the lifted passages. With 119 sources cited in the decision, the loss of the 2 of them was not easily detectable.

Petitioners point out, however, that Justice Del Castillo's verified letter of July 22, 2010 is inconsistent with his researcher's claim that the omissions were mere errors in attribution. They cite the fact that the Justice did not disclose his researcher's error in that letter despite the latter's confession regarding her mistake even before the Justice sent his letter to the Chief Justice. By denying plagiarism in his letter, Justice Del Castillo allegedly perjured himself and sought to whitewash the case.[13]

But nothing in the July 22 letter supports the charge of false testimony. Justice Del Castillo merely explained "that there

[13] Petitioner's Memorandum, pp. 26-27.

was every intention to attribute all sources whenever due" and that there was never "any malicious intent to appropriate another's work as our own," which as it turns out is a true statement. He recalled how the Court deliberated upon the case more than once, prompting major revisions in the draft of the decision. In the process, "(s)ources were re-studied, discussions modified, passages added or deleted." Nothing in the letter suggests a cover-up. Indeed, it did not preclude a researcher's inadvertent error.

And it is understandable that Justice Del Castillo did not initially disclose his researcher's error. He wrote the decision for the Court and was expected to take full responsibility for any lapse arising from its preparation. What is more, the process of drafting a particular decision for the Court is confidential, which explained his initial request to be heard on the matter without the attendance of the other parties.

Notably, neither Justice Del Castillo nor his researcher had a motive or reason for omitting attribution for the lifted passages to Criddle-Descent or to Ellis. The latter authors are highly respected professors of international law. The law journals that published their works have exceptional reputations. It did not make sense to intentionally omit attribution to these authors when the decision cites an abundance of other sources. Citing these authors as the sources of the lifted passages would enhance rather than diminish their informative value. Both Justice Del Castillo and his researcher gain nothing from the omission. Thus, the failure to mention the works of Criddle-Descent and Ellis was unquestionably due to inadvertence or pure oversight.

Petitioners of course insist that intent is not material in committing plagiarism since all that a writer has to do, to avoid the charge, is to enclose lifted portions with quotation marks and acknowledge the sources from which these were taken.[14] Petitioners point out that the Court should apply to this case the ruling in *University of the Philippines Board of Regents v. Court of Appeals and Arokiaswamy William Margaret*

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[14] *Supra* note 6, at 41.

*Celine*.[15] They argue that standards on plagiarism in the academe should apply with more force to the judiciary.

But petitioners' theory ignores the fact that plagiarism is essentially a form of fraud where intent to deceive is inherent. Their theory provides no room for errors in research, an unrealistic position considering that there is hardly any substantial written work in any field of discipline that is free of any mistake. The theory places an automatic universal curse even on errors that, as in this case, have reasonable and logical explanations.

Indeed, the 8th edition of Black's Law Dictionary defines plagiarism as the "deliberate and knowing presentation of another person's original ideas or creative expressions as one's own."[16] Thus, plagiarism presupposes intent and a deliberate, conscious effort to steal another's work and pass it off as one's own.

Besides, the Court said nothing in *U.P. Board of Regents* that would indicate that an intent to pass off another's work as one's own is not required in plagiarism. The Court merely affirmed the academic freedom of a university to withdraw a master's degree that a student obtained based on evidence that she misappropriated the work of others, passing them off as her own. This is not the case here since, as already stated, Justice Del Castillo actually imputed the borrowed passages to others.

**Second Finding**

The Court also adopts the Committee's finding that the omission of attributions to Criddle-Descent and Ellis did not bring about an impression that Justice Del Castillo himself created the passages that he lifted from their published articles. That he merely got those passages from others remains self-evident, despite the accidental deletion. The fact is that he still imputed the passages to the sources from which Criddle-Descent and Ellis borrowed them in the first place.

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[15] *Supra* note 7.

[16] *Black's Law Dictionary* (8th ed. 2004).

This is best illustrated in the familiar example above. After the deletion of the subject tag and, accidentally, its footnote which connects to the source, the lifted passage would appear like this:

**xxx Both juridical capacity and capacity to act are not rights, but qualities of persons; hence, they cannot be alienated or renounced.[43]**

**———————————————**

**43 3 Von Tuhr 296; 1 Valverde 291.**

Although the unintended deletion severed the passage's link to Tolentino, the passage remains to be attributed to Von Tuhr and Valverde, the original sources that Tolentino himself cites. The text and its footnote reference cancel out any impression that the passage is a creation of researcher X. It is the same with the passages from Criddle-Descent and Ellis. Because such passages remained attributed by the footnotes to the authors' original sources, the omission of attributions to Criddle-Descent and Ellis gave no impression that the passages were the creations of Justice Del Castillo.This wholly negates the idea that he was passing them off as his own thoughts.

True the subject passages in this case were reproduced in the *Vinuya* decision without placing them in quotation marks. But such passages are much unlike the creative line from Robert Frost,[17] "The woods are lovely, dark, and deep, but I have promises to keep, and miles to go before I sleep, and miles to go before I sleep." The passages here consisted of common definitions and terms, abridged history of certain principles of law, and similar frequently repeated phrases that, in the world of legal literature, already belong to the public realm.

To paraphrase Bast and Samuels,[18] while the academic publishing model is based on the originality of the writer's thesis,

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[17] Stopping by the Woods on a Snowy Evening (1923).

[18] Bast and Samuels, *Plagiarism and Legal Scholarship in the Age of Information Sharing: The Need for Intellectual Honesty*, 57 CATH. U. L. REV 777, 800 (2008).

the judicial system is based on the doctrine of *stare decisis*, which encourages courts to cite historical legal data, precedents, and related studies in their decisions. The judge is not expected to produce original scholarship in every respect. The strength of a decision lies in the soundness and general acceptance of the precedents and long held legal opinions it draws from.

**Third Finding**

Petitioners allege that the decision twisted the passages from Tams, Criddle-Descent, and Ellis. The Court adopts the Committee's finding that this is not so. Indeed, this allegation of twisting or misrepresentation remains a mystery to the Court. To twist means "to distort or pervert the meaning of."[19] For example, if one lifts the lyrics of the National Anthem, uses it in his work, and declares that Jose Palma who wrote it "did not love his country," then there is "twisting" or misrepresentation of what the anthem's lyrics said. Here, nothing in the *Vinuya* decision said or implied that, based on the lifted passages, authors Tams, Criddle-Descent, and Ellis supported the Court's conclusion that the Philippines is not under any obligation in international law to espouse Vinuya, *et al.'s* claims.

The fact is that, **first**, since the attributions to Criddle-Descent and Ellis were accidentally deleted, it is impossible for any person reading the decision to connect the same to the works of those authors as to conclude that in writing the decision Justice Del Castillo "twisted" their intended messages. And, **second**, the lifted passages provided mere background facts that established the state of international law at various stages of its development. These are neutral data that could support conflicting theories regarding whether or not the judiciary has the power today to order the Executive Department to sue another country or whether the duty to prosecute violators of international crimes has attained the status of *jus cogens*.

Considering how it was impossible for Justice Del Castillo to have twisted the meaning of the passages he lifted from the works of Tams, Criddle-Descent, and Ellis, the charge of "twisting"

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[19] Webster's New World College Dictionary, 3rd Edition, p. 1445.

or misrepresentation against him is to say the least, unkind. To be more accurate, however, the charge is reckless and obtuse.

**No Misconduct**

On occasions judges and justices have mistakenly cited the wrong sources, failed to use quotation marks, inadvertently omitted necessary information from footnotes or endnotes. But these do not, in every case, amount to misconduct. Only errors that are tainted with fraud, corruption, or malice are subject of disciplinary action.[20] This is not the case here. Justice Del Castillo's acts or omissions were not shown to have been impelled by any of such disreputable motives.[21] If the rule were otherwise, no judge or justice, however competent, honest, or dedicated he may be, can ever hope to retire from the judiciary with an unblemished record.[22]

**No Inexcusable Negligence**

Finally, petitioners assert that, even if they were to concede that the omission was the result of plain error, Justice Del Castillo is nonetheless guilty of gross inexcusable negligence. They point out that he has full control and supervision over his researcher and should not have surrendered the writing of the decision to the latter.[23]

But this assumes that Justice Del Castillo abdicated the writing of the *Vinuya* decision to his researcher, which is contrary to the evidence adduced during the hearing. As his researcher testified, the Justice set the direction that the research and study were to take by discussing the issues with her, setting

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[20] *Atty. Alberto P. Quinto v. Judge Gregorio S. Vios, Municipal Trial Court, Kapatagan, Lanao del Norte*, A.M. No. MTJ-04-1551, May 21, 2004, 429 SCRA 1; *Tolentino v. Camano, Jr.*, A.M. No. RTJ 10-1522, January 20, 2000, 322 SCRA 559.

[21] *Daracan v. Natividad*, A.M. No. RTC-99-1447, September 27, 2000, 341 SCRA 161.

[22] *Guerrero v. Villamor*, A.M. No. RTJ-90-483, September 25, 1998, 296 SCRA 88; *Tan v. Adre*, A.M. No. RTJ-05-1898, January 31, 2005, 450 SCRA 145.

[23] *Supra* note 13, at 25.

forth his position on those issues, and reviewing and commenting on the study that she was putting together until he was completely satisfied with it.[24] In every sense, Justice Del Castillo was in control of the writing of the report to the Court, which report eventually became the basis for the decision, and determined its final outcome.

Assigning cases for study and research to a court attorney, the equivalent of a "law clerk" in the United States Supreme Court, is standard practice in the high courts of all nations. This is dictated by necessity. With about 80 to 100 cases assigned to a Justice in our Court each month, it would be truly senseless for him to do all the studies and research, going to the library, searching the internet, checking footnotes, and watching the punctuations. If he does all these by himself, he would have to allocate at least one to two weeks of work for each case that has been submitted for decision. The wheels of justice in the Supreme Court will grind to a halt under such a proposition.

What is important is that, in this case, Justice Del Castillo retained control over the writing of the decision in the *Vinuya* case without, however, having to look over his researcher's shoulder as she cleaned up her draft report to ensure that she hit the right computer keys. The Justice's researcher was after all competent in the field of assignment given her. She finished law from a leading law school, graduated third in her class, served as Editor-in Chief of her school's Law Journal, and placed fourth in the bar examinations when she took it. She earned a master's degree in International Law and Human Rights from a prestigious university in the United States under the Global-Hauser program, which counsel for petitioners concedes to be one of the top post graduate programs on International Law in the world. Justice Del Castillo did not exercise bad judgment in assigning the research work in the *Vinuya* case to her.

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[24] *Supra* note 6, at 27-30.

Can errors in preparing decisions be prevented? Not until computers cease to be operated by human beings who are vulnerable to human errors. They are hypocrites who believe that the courts should be as error-free as they themselves are.

Incidentally, in the course of the submission of petitioners' exhibits, the Committee noted that petitioners' Exhibit J, the accusing statement of the Faculty of the U.P. College of Law on the allegations of plagiarism and misinterpretation, was a mere dummy. The whole of the statement was reproduced but the signatures portion below merely listed the names of 38 faculty members, in solid rows, with the letters "Sgd" or "signed" printed beside the names without exception. These included the name of retired Supreme Court Justice Vicente V. Mendoza, a U.P. professor.

Because the Committee declined to admit a mere dummy of Exhibit J, it directed Atty. Roque to present the signed copy within three days of the August 26 hearing.[25] He complied. As it turned out, the original statement was signed by only a minority of the faculty members on the list. The set of signatories that appeared like solid teeth in the dummy turned out to be broken teeth in the original. Since only 37 out of the 81 on the list signed the document, it does not appear to be a statement of the Faculty but of just some of its members. And retired Justice V. V. Mendoza did not sign the statement, contrary to what the dummy represented. The Committee wondered why the Dean submitted a dummy of the signed document when U.P. has an abundance of copying machines.

Since the above circumstances appear to be related to separate *en banc* matter concerning the supposed Faculty statement, there is a need for the Committee to turn over the signed copy of the same to the *en banc* for its consideration in relation to that matter.

**WHEREFORE,** in view of all of the above, the Court:

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[25] Order dated August 26, 2010, Committee Records, pp. 382-383.

1. *DISMISSES* for lack of merit petitioner Vinuya, *et al.'s* charges of plagiarism, twisting of cited materials, and gross neglect against Justice Mariano C. del Castillo;

2. *DIRECTS* the Public Information Office to send copies of this decision to Professors Evan J. Criddle and Evan Fox-Descent, Dr. Mark Ellis, and Professor Christian J. Tams at their known addresses;

3. *DIRECTS* the Clerk of Court to provide all court attorneys involved in legal research and reporting with copies of this decision and to enjoin them to avoid editing errors committed in the *Vinuya* case while using the existing computer program especially when the volume of citations and footnoting is substantial; and

4. Finally, *DIRECTS* the Clerk of Court to acquire the necessary software for use by the Court that can prevent future lapses in citations and attributions.

Further, the Court *DIRECTS* the Committee on Ethics and Ethical Standards to turn over to the *en banc* the dummy as well as the signed copy of petitioners' Exhibit J, entitled "Restoring Integrity," a statement by the Faculty of the University of the Philippines College of Law for the *en banc's* consideration in relation to the separate pending matter concerning that supposed Faculty statement.

**SO ORDERED.**

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

*Carpio Morales, J.,* joins the dissent of *J.* Sereno.

*Sereno, J.,* dissents and reserves the right to issue a separate opinion.

*Del Castillo, J.,* no part.

*Carpio, J.,* on official leave.

*Peralta, J.,* on leave.

## DISSENTING OPINION

**SERENO, *J.*:**

What is black can be called "white" but it cannot turn white by the mere calling. The unfortunate ruling of the majority Decision that no plagiarism was committed stems from its failure to distinguish between the determination of the objective, factual existence of plagiarism in the *Vinuya* decision[1] and the determination of the liability that results from a finding of plagiarism. Specifically, it made "malicious intent," which heretofore had not been relevant to a finding of plagiarism, an essential element.

The majority Decision will thus stand against the overwhelming conventions on what constitutes plagiarism. In doing so, the Decision has created unimaginable problems for Philippine academia, which will from now on have to find a disciplinary response to plagiarism committed by students and researchers on the justification of the majority Decision.

It has also undermined the protection of copyrighted work by making available to plagiarists "lack of malicious intent" as a defense to a charge of violation of copy or economic rights of the copyright owner committed through lack of attribution. Under Section 184 of R.A. 8293 ("An Act Describing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for Its Powers and Functions, and for Other Purposes"), or the Intellectual Property Code of the Philippines, there is no infringement of copyright in the use of another's work in:

> (b) the making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: **Provided that the source and the name of the author, if appearing on the work, are mentioned.** (Emphasis supplied)

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[1] *Isabelita C. Vinuya, et al. v. The Honorable Executive Secretary, et al.*, G.R. No. 1622309, April 28, 2010.

Because the majority Decision has excused the lack of attribution to the complaining authors in the *Vinuya* decision to editorial errors and lack of malicious intent to appropriate — and that therefore there was no plagiarism — lack of intent to infringe copyright in the case of lack of attribution may now also become a defense, rendering the above legal provision meaningless.[2]

## TABLES OF COMPARISON

The tables of comparison below were first drawn based on the tables made by petitioners in their Supplemental Motion for Reconsideration. This was then compared with Annex "A" of Justice Mariano del Castillo's letter, which is his tabular explanation for some of the copied excerpts.[3] The alleged plagiarism of the cited excerpts were then independently verified and re-presented below, with the necessary revisions accurately reflecting the alleged plagiarized works and the pertinent portions of the decision. A few excerpts in the table of petitioners are not included, as they merely refer to in-text citations.

**TABLE A**: Comparison of Christian J. Tams's book, entitled *Enforcing Erga Omnes Obligations in International Law* (2005), hereinafter called "Tams's work" and the Supreme Court's 28 April 2010 Decision in *Vinuya, et al. v. Executive Secretary*.

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| 1. | Christian J. Tams, *ENFORCING ERGA OMNES OBLIGATIONS IN INTERNATIONAL LAW* (2005). xxx The Latin phrase '*erga omnes*' thus has become one of the rallying cries of those sharing a belief in the emergence of a value-based international public order based on law. x x x | *Vinuya, et al. v. Executive Secretary*, G.R. No. 162230, 28 April 2010.<br><br>*The Latin phrase, '*erga omnes*,' has since become one of the rallying cries of those sharing a belief in the emergence of a value-based international public order. However, as is so often the |

[2] Judges cannot be liable for copyright infringement in their judicial work (Section 184.1(k), R.A. 8293).

[3] Justice Mariano del Castillo's letter addressed to Chief Justice Renato C. Corona and Colleagues, dated July 22, 2010.

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| | As often, the reality is neither so clear nor so bright. One problem is readily admitted by commentators:whatever the relevance of obligations *erga omnes* as a legal concept, its full potential remains to be realised in practice. xxx Bruno Simma's much-quoted observation encapsulates this feeling of disappointment: 'Viewed realistically, the world of obligations *erga omnes* is still the world of the "ought" rather than of the "is".<br><br>(pp. 3-4 of the Christian Tams's book) | case, the reality is neither so clear nor so bright. Whatever the relevance of obligations *erga omnes* as a legal concept, its full potential remains to be realized in practice. [FN69] (p. 30, Body of the 28 April 2010 Decision)<br><br>[FN69] Bruno Simma's much-quoted observation encapsulates this feeling of disappointment: 'Viewed realistically, the world of obligations *erga omnes* is still the world of the "ought" rather than of the "is"' THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 125 (Simma, ed. 1995). *See* Tams, Enforcing Obligations *Erga omnes* in International Law (2005).<br><br>*The decision mentioned Christian Tams's book in footnote 69. |

**TABLE B**: Comparison of Evan J. Criddle & Evan Fox-Decent's article in the Yale Journal of International Law, entitled *A Fiduciary Theory of Jus Cogens* (2009), hereinafter called "Criddle's & Fox-Decent's work" and the Supreme Court's 28 April 2010 Decision in *Vinuya, et al. v. Executive Secretary*.

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| | Evan J. Criddle & Evan Fox-Decent, *A Fiduciary Theory of Jus Cogens*, 34 YALE J. INT'L L. 331 (2009). | *Vinuya, et al. v. Executive Secretary*, G.R. No. 162230, 28 April 2010 |

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| 1. | In international law, the term *"jus cogens"* (literally, "compelling law") refers to norms that command peremptory authority, superseding conflicting treaties and custom. x x x *Jus cogens* norms are considered peremptory in the sense that they are mandatory, do not admit derogation, and can be modified only by general international norms of equivalent authority. [FN2] | In international law, the term *"jus cogens"* (literally, "compelling law") refers to norms that command peremptory authority, superseding conflicting treaties and custom. *Jus cogens* norms are considered peremptory in the sense that they are mandatory, do not admit derogation, and can be modified only by general international norms of equivalent authority.[FN70] |
| | [FN2] See Vienna Convention on the Law of Treaties Art. 53, opened for signature May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 {hereinafter VCLT].<br><br>(pp. 331-332 of the Yale Law Journal of Int'l Law) | (pp. 30-31, Body of the 28 April 2010 Decision)<br><br>[FN70] See Vienna Convention on the Law of Treaties Art. 53, opened for signature May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 [hereinafter VCLT]. |
| 2. | Peremptory norms began to attract greater scholarly attention with the publication of Alfred von Verdross's influential 1937 article, Forbidden Treaties in International Law.[FN10]<br><br>[FN10] For example, in the 1934 Oscar Chinn Case, Judge Schücking's influential dissent stated that neither an international court nor an arbitral tribunal should apply a treaty provision in contradiction to *bonos mores*. Oscar Chinn Case, 1934 P.C.I.J. (ser. A/B) No. 63, | x x x but peremptory norms began to attract greater scholarly attention with the publication of Alfred von Verdross's influential 1937 article, Forbidden Treaties in International Law. [FN72] (p. 31, Body of the 28 April 2010 Decision)<br><br>[FN72] Verdross argued that certain discrete rules of international custom had come to be recognized as having a compulsory character notwithstanding contrary state agreements. |

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| | at 149-50 (Dec. 12) (Schücking, *J*., dissenting).<br><br>(p. 334 of the Yale Law Journal of Int'l Law) | At first, Verdross's vision of international *jus cogens* encountered skepticism within the legal academy. These voices of resistance soon found themselves in the minority, however, as the *jus cogens* concept gained enhanced recognition and credibility following the Second World War. (See Lauri Hannikainen, Peremptory Norms (*Jus cogens*) in International Law: Historical Development, Criteria, Present Status 150 (1988) (surveying legal scholarship during the period 1945-69 and reporting that "about eighty per cent [of scholars] held the opinion that there are peremptory norms existing in international law"). |
| 3. | Classical publicists such as Hugo Grotius, Emer de Vattel, and Christian Wolff drew upon the Roman law distinction between jus *dispositivum* (voluntary law) and *jus scriptum* (obligatory law) to differentiate consensual agreements between states from the "necessary" principles of international law that bind all states as a point of conscience regardless of consent. [FN6] | [FN71] Classical publicists such as Hugo Grotius, Emer de Vattel, and Christian Wolff drew upon the Roman law distinction between *jus dispositivum* (voluntary law) and *jus scriptum* (obligatory law) to differentiate consensual agreements between states from the "necessary principles of international law that bind all states as a point of conscience regardless of consent. |

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| | [FN6] See Hugonis Grotii, *De Jure belli et Pacis* [On the law of War and Peace] (William Whewell ed. & trans., John W. Parker, London 2009) (1625); Emer de Vattel, *Le Droit des Gens ou Principes de la Loi Naturelle* [The Law of Nations or Principles of Natural Law] §§9, 27 (175) (distinguishing "le Droit des Gens Naturel, ou Necessaire" from "le Droit Volontaire"); Christian Wolff, *Jus Gentium Methodo Scientifica Pertractorum* [A Scientific Method for Understanding the Law of Nations] 5 (James Brown Scott ed., Joseph H. Drake trans., Clarendon Press 1934) (1764)<br><br>(p. 334 of the Yale Law Journal of Int'l Law) | (p. 31, Footnote 71 of the 28 April 2010 Decison) |
| 4. | Early twentieth-century publicists such as Lassa Oppenheim and William Hall asserted confidently that states could not abrogate certain "universally recognized principles" by mutual agreement.[FN9] Outside the academy, judges on the Permanent Court of International Justice affirmed the existence of peremptory norms in international law by referencing treaties *contra bonos mores* (contrary to public policy) in a series of individual concurring | [FN71] xxx Early twentieth-century publicists such as Lassa Oppenheim and William Hall asserted that states could not abrogate certain "universally recognized principles" by mutual agreement. x x x Judges on the Permanent Court of International Justice affirmed the existence of peremptory norms in international law by referencing treaties *contra bonos mores* (contrary to public policy) in a series of individual concurring and dissenting opinions. x x x |

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| | and dissenting opinions.[FN10] x x x<br><br>[FN9] William Hall, A Treatise on International Law 382-83 (8th ed. 1924) (asserting that "fundamental principles of international law" may "invalidate [], or at least render voidable," conflicting international agreements); 1 Lassa Oppenheim, International Law 528 (1905).<br><br>[FN10] For example, in the 1934 Oscar Chinn Case, Judge Schücking's influential dissent stated that neither an international court nor an arbitral tribunal should apply a treaty provision in contradiction to *bonos mores*. Oscar Chinn Case, 1934 P.C.I.J. (ser. A/B) No. 63, at 149-50 (Dec. 12) (Schücking, *J.*, dissenting).<br><br>(pp. 334-5 of the Yale Law Journal of Int'l Law) | (p. 31, Footnote 71 of the 28 April 2010 Decision) |
| 5. | [FN9] William Hall, A Treatise on International Law 382-83 (8th ed. 1924) (asserting that "fundamental principles of international law" may "invalidate [], or at least render voidable," conflicting international agreements) xxx<br><br>(Footnote 9 of the Yale Law Journal of Int'l Law) | [FN71] x x x (William Hall, A Treatise on International Law 382-83 (8th ed. 1924) (asserting that "fundamental principles of international law" may "invalidate [], or at least render voidable," conflicting international agreements) x x x<br><br>(p. 31, Footnote 71 of the 28 April 2010 Decision) |

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| 6. | [FN10] For example, in the 1934 Oscar Chinn Case, Judge Schücking's influential dissent stated that neither an international court nor an arbitral tribunal should apply a treaty provision in contradiction to *bonos mores*. Oscar Chinn Case, 1934 P.C.I.J. (ser. A/B) No. 63, at 149-50 (Dec. 12) (Schücking, J., dissenting).<br><br>(Footnote 9 of the Yale Law Journal of Int'l Law) | [FN71] x x x (For example, in the 1934 Oscar Chinn Case, Judge Schücking's influential dissent stated that neither an international court nor an arbitral tribunal should apply a treaty provision in contradiction to *bonos mores*. Oscar Chinn Case, 1934 P.C.I.J. (ser. A/B) No. 63, at 149-50 (Dec. 12) (Schücking, J., dissenting).<br><br>(p. 31, Footnote 71 of the 28 April 2010 Decision) |
| 7. | Verdross argued that certain discrete rules of international custom had come to be recognized as having a compulsory character notwithstanding contrary state agreements.[FN12]<br><br>[FN12] [Von Verdross, *supra* note 5.]<br><br>(p. 335 of the Yale Law Journal of Int'l Law) | [FN72] Verdross argued that certain discrete rules of international custom had come to be recognized as having a compulsory character notwithstanding contrary state agreements. xxx<br><br>(p. 31, Footnote 72 of the 28 April 2010 Decision) |
| 8. | At first, Verdross's vision of international *jus cogens* encountered skepticism within the legal academy. xxx These voices of resistance soon found themselves in the minority, however, as the *jus cogens* concept gained enhanced recognition and credibility following the Second World War. | [FN72] xxx At first, Verdross's vision of international *jus cogens* encountered skepticism within the legal academy. These voices of resistance soon found themselves in the minority, however, as the *jus cogens* concept gained enhanced recognition and credibility following the Second World War. x x x |

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| | (pp. 335-6 of the Yale Law Journal of Int'l Law) | (p. 31, Footnote 72 of the 28 April 2010 Decision) |
| 9. | [FN18] See Lauri Hannikainen, Peremptory Norms (*Jus Cogens*) in International Law: Historical Development, Criteria, Present Status 150 (1988) (surveying legal scholarship during the period 1945-69 and reporting that "about eighty per cent [of scholars] held the opinion that there are peremptory norms existing in international law").<br><br>(Footnote 18 of the Yale Law Journal of Int'l Law) | [FN72] x x x (See Lauri Hannikainen, Peremptory Norms (*Jus cogens*) in International Law: Historical Development, Criteria, Present Status 150 (1988) (surveying legal scholarship during the period 1945-69 and reporting that "about eighty per cent [of scholars] held the opinion that there are peremptory norms existing in international law").<br><br>(p. 31, Footnote 72 of the 28 April 2010 Decision) |
| 10. | x x x the 1950s and 1960s with the United Nations International Law Commission's (ILC) preparation of the Vienna Convention on the Law of Treaties (VCLT).[FN20]<br><br>[FN20] VCLT, *supra* note 2. | xxx the 1950s and 1960s with the ILC's preparation of the Vienna Convention on the Law of Treaties (VCLT).[FN73]<br><br>(p. 31, Body of the 28 April 2010 Decision)<br><br>[FN73] In March 1953, the ILC's Special Rapporteur, Sir Hersch Lauterpacht, submitted for the ILC's consideration a partial draft convention on treaties which stated that "[a] treaty, or any of its provisions, is void if its performance involves an act which is illegal under international |

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| | (p. 336 of the Yale Law Journal of Int'l Law) | law and if it is declared so to be by the International Court of Justice." Hersch Lauterpacht, Law of Treaties: Report by Special Rapporteur, [1953] 2 Y.B. Int'l L. Comm'n 90, 93, U.N. Doc. A/CN.4/63. |
| 11. | In March 1953, Lauterpacht submitted for the ILC's consideration a partial draft convention on treaties which stated that "[a] treaty, or any of its provisions, is void if its performance involves an act which is illegal under international law and if it is declared so to be by the International Court of Justice."[FN21]<br><br>[FN21] Hersch Lauterpacht, Law of Treaties: Report by Special Rapporteur, [1953] 2 Y.B. Int'l L. Comm'n 90, 93, U.N. Doc. A/CN.4/63.<br><br>(p. 336 of the Yale Law Journal of Int'l Law) | [FN73] In March 1953, the ILC's Special Rapporteur, Sir Hersch Lauterpacht, submitted for the ILC's consideration a partial draft convention on treaties which stated that "[a] treaty, or any of its provisions, is void if its performance involves an act which is illegal under international law and if it is declared so to be by the International Court of Justice." Hersch Lauterpacht, Law of Treaties: Report by Special Rapporteur, [1953] 2 Y.B. Int'l L. Comm'n 90, 93, U.N. Doc. A/CN.4/63.<br><br>(p. 31, Footnote 73 of the 28 April 2010 Decision) |
| 12. | Lauterpacht's colleagues on the ILC generally accepted his assessment that certain international norms had attained the status of *jus cogens*. [FN23] Yet despite general agreement over the existence of international *jus cogens*, the ILC was unable | Though there was a consensus that certain international norms had attained the status of *jus cogens*, [FN74] the ILC was unable to reach a consensus on the proper criteria for identifying peremptory norms. |

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| | to reach a consensus regarding either the theoretical basis for peremptory norms' legal authority or the proper criteria for identifying peremptory norms.<br><br>[FN23] See Hannikainen, *supra* note 18, at 160-61 (noting that none of the twenty five members of the ILC in 1963 denied the existence of *jus cogens* or contested the inclusion of an article on *jus cogens* in the VCLT); see, *e.g.*, Summary Records of the 877th Meeting, [1966] 1 Y.B. Int'l L. Comm'n 227, 230-231, U.N. Doc. A/CN.4/188 (noting that the "emergence of a rule of *jus cogens* banning aggressive war as an international crime" was evidence that international law contains "minimum requirement[s] for safeguarding the existence of the international community").<br><br>(p. 336 of the Yale Law Journal of Int'l Law) | (p. 31, Body of the 28 April 2010 Decision)<br><br>[FN74] See Summary Records of the 877th Meeting, [1966] 1 Y.B. Int'l L. Comm'n 227, 230-231, U.N. Doc. A/CN.4/188 (noting that the "emergence of a rule of *jus cogens* banning aggressive war as an international crime" was evidence that international law contains "minimum requirement[s] for safeguarding the existence of the international community"). |
| 13. | [FN23] x x x see, *e.g.*, Summary Records of the 877th Meeting, [1966] 1 Y.B. Int'l L. Comm'n 227, 230-231, U.N. Doc. A/CN.4/188 (noting that the "emergence of a rule of *jus cogens* banning aggressive war as an international crime" was evidence that international law contains "minimum | [FN74] See Summary Records of the 877th Meeting, [1966] 1 Y.B. Int'l L. Comm'n 227, 230-231, U.N. Doc. A/CN.4/188 (noting that the "emergence of a rule of *jus cogens* banning aggressive war as an international crime" was evidence that international law contains |

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| | requirement[s] for safeguarding the existence of the international community").<br><br>(Footnote 23 of the Yale Law Journal of Int'l Law) | "minimum requirement[s] for safeguarding the existence of the international community").<br><br>(p. 31, Footnote 74 of the 28 April 2010 Decision) |
| 14. | After an extended debate over these and other theories of *jus cogens*, the ILC concluded ruefully in 1963 that "there is not as yet any generally accepted criterion by which to identify a general rule of international law as having the character of *jus cogens*."[FN27] x x x<br>In commentary accompanying the draft convention, the ILC indicated that "the prudent course seems to be to . . . leave the full content of this rule to be worked out in State practice and in the jurisprudence of international tribunals."[FN29] x x x<br><br>[FN27] Second Report on the Law of Treaties, [1963] 2 Y.B. Int'l L. Comm'n 1, 52, U.N. Doc. A/CN.4/156.<br>[FN29] Second Report on the Law of Treaties, *supra* note 27, at 53.<br><br>(pp. 337-8 of the Yale Law Journal of Int'l Law) | After an extended debate over these and other theories of *jus cogens*, the ILC concluded ruefully in 1963 that "there is not as yet any generally accepted criterion by which to identify a general rule of international law as having the character of *jus cogens*."[FN75] In a commentary accompanying the draft convention, the ILC indicated that "the prudent course seems to be to x x x leave the full content of this rule to be worked out in State practice and in the jurisprudence of international tribunals."[FN76] x x x<br><br>(p. 32, Body of the 28 April 2010 Decision)<br><br>[FN75] Second Report on the Law of Treaties, [1963] 2 Y.B. Int'l L. Comm'n 1, 52, U.N. Doc. A/CN.4/156.<br><br>[76] *Id.* at 53. |
| 15. | In some municipal cases, courts have declined to recognize | [FN77] x x x In some municipal cases, courts have declined |

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| | international norms as peremptory while expressing doubt about the proper criteria for identifying *jus cogens*.[FN72]<br><br>[FN72] See, *e.g.*, *Sampson v. Federal Republic of Germany*, 250 F.3d 1145, 1149 (7th Cir. 2001) (expressing concern that *jus cogens* should be invoked "[o]nly as a last resort").<br><br>(p. 346 of the Yale Law Journal of Int'l Law) | to recognize international norms as peremptory while expressing doubt about the proper criteria for identifying *jus cogens*. (See, *e.g.*, *Sampson v. Federal Republic of Germany*, 250 F.3d 1145, 1149 (7th Cir. 2001) (expressing concern that *jus cogens* should be invoked "[o]nly as a last resort")). x x x<br><br>(p. 32, Footnote 77 of the 28 April 2010 Decision) |
| 16. | In other cases, national courts have accepted international norms as peremptory, but have hesitated to enforce these norms for fear that they might thereby compromise state sovereignty.[FN73] x x x In *Congo v. Rwanda*, for example, Judge *ad hoc* John Dugard observed that the ICJ had refrained from invoking the *jus cogens* concept in several previous cases where peremptory norms manifestly clashed with other principles of general international law.[FN74] Similarly, the European Court of Human Rights has addressed *jus cogens* only once, in *Al-Adsani v. United Kingdom*, when it famously rejected the argument that *jus cogens* violations would deprive a state of sovereign immunity. | [FN77] x x x In other cases, national courts have accepted international norms as peremptory, but have hesitated to enforce these norms for fear that they might thereby compromise state sovereignty. (See, *e.g.*, *Bouzari v. Iran*, [2004] 71 O.R.3d 675 (Can.) (holding that the prohibition against torture does not entail a right to a civil remedy enforceable in a foreign court)).<br><br>In *Congo v. Rwanda*, for example, Judge *ad hoc* John Dugard observed that the ICJ had refrained from invoking the *jus cogens* concept in several previous cases where peremptory norms manifestly clashed with other principles of general international law. (See Armed Activities on |

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| | [FN73] See, *e.g.*, *Bouzari v. Iran*, [2004] 71 O.R.3d 675 (Can.) (holding that the prohibition against torture does not entail a right to a civil remedy enforceable in a foreign court).<br><br>[FN74] See Armed Activities on the Territory of the Congo (*Dem. Rep. Congo v. Rwanda*) (Judgment of Feb. 3, 2006), at 2 (dissenting opinion of Judge Dugard) x x x.<br><br>(pp. 346-7 of the Yale Law Journal of Int'l Law) | the Territory of the Congo (*Dem. Rep. Congo v. Rwanda*) (Judgment of February 3, 2006), at 2 (Dissenting Opinion of Judge Dugard))<br><br>Similarly, the European Court of Human Rights has addressed *jus cogens* only once, in *Al-Adsani v. United Kingdom*, when it famously rejected the argument that *jus cogens* violations would deprive a state of sovereign immunity. *Al-Adsani v. United Kingdom*, 2001-XI Eur. Ct. H.R. 79, 61).<br>(p. 32, Footnote 77 of the 28 April 2010 Decision) |

**TABLE C**: Comparison of Mark Ellis's article in the Case Western Reserve Journal of International Law, entitled *Breaking the Silence: Rape as an International Crime* (2006-7), hereafter called "Ellis's work" and the Supreme Court's 28 April 2010 Decision in *Vinuya, et al. v. Executive Secretary*.

| | Mark Ellis, *Breaking the Silence: Rape as an International Crime*, 38 CASE W. RES. J. INT'L L. 225 (2006-2007). | *Vinuya, et al. v. Executive Secretary*, G.R. No. 162230, 28 April 2010. |
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| 1. | The concept of rape as an international crime is relatively new. This is not to say that rape has never been historically prohibited, particularly in war.[FN7] The 1863 Lieber | [FN65] The concept of rape as an international crime is relatively new. This is not to say that rape has never been historically prohibited, particularly in war. But |

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| | Instructions, which codified customary inter-national law of land warfare, classified rape as a crime of "troop discipline."[FN8] It specified rape as a capital crime punishable by the death penalty.[FN9] The 1907 Hague Convention protected women by requiring the protection of their "honour."[FN10] But modern-day sensitivity to the crime of rape did not emerge until after World War II.<br><br>[FN7] For example, the Treaty of Amity and Commerce Prussia and the United States provides that in time of war all women and children "shall not be molested in their persons." The Treaty of Amity and Commerce, Between his Majesty the King of Prussia and the United States of America, Art. 23, Sept. 10, 1785, U.S.-Pruss., 8 TREATIES & OTHER INT'L AGREEMENTS OF THE U.S. 78, 85, available at x x x.<br><br>[FN8] David Mitchell, The Prohibition of Rape in International Humanitarian Law as a Norm of *Jus Cogens*: Clarifying the Doctrine, 15 DUKE J. COMP. INT'L L. 219, 224.<br><br>[FN9] *Id*. at 236. | modern-day sensitivity to the crime of rape did not emerge until after World War II. xxx (For example, the Treaty of Amity and Commerce between Prussia and the United States provides that in time of war all women and children "shall not be molested in their persons." The Treaty of Amity and Commerce, Between his Majesty the King of Prussia and the United States of America, Art. 23, Sept. 10, 1785, U.S.-Pruss., 8 Treaties & Other Int'l Agreements Of The U.S. 78, 85[)]. The 1863 Lieber Instructions classified rape as a crime of "troop discipline." (Mitchell, The Prohibition of Rape in International Humanitarian Law as a Norm of *Jus cogens*: Clarifying the Doctrine, 15 DUKE J. COMP. INT'L. L. 219, 224). It specified rape as a capital crime punishable by the death penalty (*Id*. at 236). The 1907 Hague Convention protected women by requiring the protection of their "honour." ("Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected." Convention (IV) Respecting the Laws & Customs of War |

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| | [FN10] "Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected." Convention (IV) Respecting the Laws & Customs of War on Land, Art. 46, Oct. 18, 1907, available at http://www.yale.edu/lawweb/avalon/lawofwar/hague04.htm #Art46. (p. 227 of the case Western Law reserve of Int'l. Law) | on Land, Art. 46, Oct. 18, 1907[)]. x x x.<br><br>(p. 27, Footnote 65 of the 28 April 2010 Decision) |
| 2. | After World War II, when the Allies established the Nuremberg Charter, the word rape was not mentioned. The article on crimes against humanity explicitly set forth prohibited acts, but rape was not mentioned by name.[FN11]<br><br>[FN11] See generally, Agreement for the Prosecution and Punishment of the Major War Criminals of the Euro-pean Axis, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279.(p. 227 of the Case Western Law Reserve Journal of Int'l Law)<br><br>(p. 227 of the Case Western Law Reserve Journal of Int'l Law) | [FN65] x x x In the Nuremberg Charter, the word rape was not mentioned. The article on crimes against humanity explicitly set forth prohibited acts, but rape was not mentioned by name. x x x *See* Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279. x x x.<br><br>(p. 27, Footnote 65 of the 28 April 2010 Decision) |
| 3. | The Nuremberg Judgment did not make any reference to rape and rape was not prosecuted.[FN13] x x x. | [FN65] x x x The Nuremberg Judgment did not make any reference to rape and rape was not prosecuted. (Judge Gabrielle Kirk McDonald, |

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| | It was different for the Charter of the International Military Tribunal for the Far East.[FN15] xxx The Tribunal prosecuted rape crimes, even though its Statute did not explicitly criminalize rape.[FN17] The Far East Tribunal held General Iwane Matsui, Commander Shunroku Hata and Foreign Minister Hirota criminally responsible for a series of crimes, including rape, committed by persons under their authority.[FN18]<br><br>[FN13] Judge Gabrielle Kirk McDonald, The International Criminal Tribunals Crime and Punishment in the International Arena, 7 ILSA J. INT'L COMP L. 667, at 676.<br><br>[FN15] See Charter of the International Tribunal for the Far East, Jan. 19, 1946, T.I.A.S. 1589.<br><br>[FN17] See McDonald, *supra* note 13, at 676.<br><br>[FN18] THE TOKYO JUDGMENT: JUDGMENT OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST 445-54 (B.V.A. Roling and C.F. Ruter eds., 1977).<br><br>(p. 228 of the Case Western Law Reserve Journal of Int'l Law) | *The* International Criminal Tribunals Crime and Punishment in the International Arena,7 ILSA J. Int'l. Comp. L. 667, 676.) _ However, International Military Tribunal for the Far East prosecuted rape crimes, even though its Statute did not explicitly criminalize rape. The Far East Tribunal held General Iwane Matsui, Commander Shunroku Hata and Foreign Minister Hirota criminally responsible for a series of crimes, including rape, committed by persons under their authority. (The Tokyo Judgment: Judgment Of The International Military Tribunal For The Far East 445-54 (1977). x x x<br><br>(p. 27, Footnote 65 of the 28 April 2010 Decision) |

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| 4. | The first mention of rape as a specific crime came in December 1945 when Control Council Law No. 10 included the term rape in the definition of crimes against humanity.[FN22] Law No. 10, adopted by the four occupying powers in Germany, was devised to establish a uniform basis for prosecuting war criminals in German courts.<br><br>[FN22] Control Council for Germany, Law No. 10: Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, Dec. 20, 1945, 3 Official Gazette Control Council for Germany 50, 53 (1946), available at http://www1.umn.edu/humanrts/instree/ccno10.htm (last visited Nov. 20, 2003). This law set forth a uniform legal basis in Germany for the prosecution of war criminals and similar offenders, other than those dealt with under the International Military Tribunal. See id. at 50.<br><br>(pp. 228-9 of the Case Western Law Reserve Journal of Int'l Law) | [FN65] x x x The first mention of rape as a specific crime came in December 1945 when Control Council Law No. 10 included the term rape in the definition of crimes against humanity. Law No. 10, adopted by the four occupying powers in Germany, was devised to establish a uniform basis for prosecuting war criminals in German courts. (Control Council for Germany, Law No. 10: Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, Dec. 20, 1945, 3 Official Gazette Control Council for Germany 50, 53 (1946)) x x x<br><br>(p. 27, Footnote 65 of the 28 April 2010 Decision) |
| 5. | The 1949 Geneva Convention Relative to the Treatment of Prisoners of War was the first | [FN65] x x x The 1949 Geneva Convention Relative to the Treatment of Prisoners of |

| | | |
|---|---|---|
| | modern-day international instrument to establish protections against rape for women.[FN23] However, the most important development in breaking the silence of rape as an international crime has come through the jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR). Both of these Tribunals have significantly advanced the crime of rape by enabling it to be prosecuted as genocide, a war crime, and a crime against humanity. x x x.<br><br>[FN23] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, Art. 27, 6 U.S.T. 3316, 75 U.N.T.S. 287 (entry into force Oct. 20, 1950) [hereinafter Fourth Geneva Convention]. | War was the first modern-day international instrument to establish protections against rape for women. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, Art. 27, 6 U.S.T. 3316, 75 U.N.T.S. 287 (entry into force Oct. 20, 1950) [hereinafter Fourth Geneva Convention]. Furthermore, the ICC, the ICTY, and the International Criminal Tribunal for Rwanda (ICTR) have significantly advanced the crime of rape by enabling it to be prosecuted as genocide, a war crime, and a crime against humanity. x x x.<br><br>(p. 27, Footnote 65 of the 28 April 2010 Decision) |

**Forms of Plagiarism**

There are many ways by which plagiarism can be committed.[4] For the purpose of this analysis, we used the standard reference book prescribed for Harvard University students, "Writing with Sources" by Gordon Harvey.

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[4] Gordon Harvey, *WRITING WITH SOURCES: A GUIDE FOR HARVARD STUDENTS* (Hackett Publishing Company, 2nd ed. [c] 2008).

Harvey identifies four forms of plagiarism:[5] (a) uncited data or information;[6] (b) an uncited idea, whether a specific claim or general concept;[7] (c) an unquoted but verbatim phrase or passage;[8] and (d) an uncited structure or organizing strategy.[9] He then explains how each form or mode of plagiarism is committed. Plagiarism is committed in mode (a) by "plagiarizing information that is not common knowledge."[10] Mode (b) is committed when "distinctive ideas are plagiarized," "even though you present them in a different order and in different words, because they are uncited."[11]

Even if there has been a prior citation, succeeding appropriations of an idea to make it appear as your own is plagiarism, because the "[previous] citation in [an earlier] passage is a deception." Mode (c) is committed when "you … borrowed several distinctive phrases verbatim, without quotation marks…" Mode (d) is committed when, though the words and details are original, "(y)ou have, however, taken the structural framework or outline directly from the source passage … even though, again, your language differs from your source and your invented examples are original."[12]

These forms of plagiarism can exist simultaneously in one and the same passage. There may be a complete failure to use quotation marks in one part of the sentence or paragraph while combining that part with phrases employing an uncited structure or organizing strategy. There may be patchwork

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[5] *Id.* at 32.

[6] *Id.* at 33.

[7] *Id.*

[8] *Id.* at 34.

[9] *Id.* at 32-35.

[10] *Id.* at 32.

[11] *Id.* at 33.

[12] Harvey, *supra* at 32.

plagiarizing committed by collating different works or excerpts from the same work without proper attribution.[13]

These acts of plagiarism can also be committed in footnotes in the same way and at the same degree of unacceptability as plagiarized passages in the body. This is especially frowned upon in footnotes that are discursive or "content" footnotes or endnotes. Harvey explains that a discursive footnote or endnote is "a note that includes comments, not just publication information . . . when you want to tell your reader something extra to the strict development of your argument, or incorporate extra information about sources."[14]

**Violations of Rules against Plagiarism in the *Vinuya* Decision**

Below are violations of the existing rules against plagiarism that can be found in the *Vinuya* decision. The alphanumeric tags correspond to the table letter and row numbers in the tables provided above.

A.1 Failure to use quotation marks to indicate that the entire paragraph in the body of the decision on page 30 was not the *ponente's* original paragraph, but was lifted verbatim from Tams's work. The attribution to Tams is wholly insufficient because without the quotation marks, there is nothing to alert the reader that the paragraph was lifted verbatim from Tams. The footnote leaves the reader with the impression that the said paragraph is the author's own analysis of *erga omnes*.

The "*See* Tams, Enforcing Obligations *Erga omnes* in International Law (2005)" line in footnote 69 of the *Vinuya* decision does not clearly indicate that the statement on Simma's observation was lifted directly from Tams's work; it only directs the reader to Tams's work should the reader wish to read further discussions on the matter.

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[13] *Id.* at 32.

[14] *Id.* at 26.

B.1 Failure to use quotation marks to indicate that the two sentences were not the *ponente's*, but were lifted verbatim from two non-adjoining sentences found on pages 331 and 332 of the *Yale Law Journal of International Law* article of Criddle & Fox-Decent and with absolutely no attribution to the latter.

B.2 Failure to use quotation marks to indicate that the sentence fragment on peremptory norms was not the *ponente's* original writing, but was lifted verbatim from page 334 of the *Yale Law Journal of International Law* article of Criddle & Fox-Decent with absolutely no attribution to the authors.

B.3 Failure to use quotation marks to indicate that the first sentence in discursive footnote number 71 was not the *ponente*'s idea, but was lifted verbatim from Criddle & Fox-Decent's work at page 334.

B.4 Failure to use quotation marks to indicate that the third sentence in discursive footnote number 71 was not the *ponente's* idea, but was lifted from Criddle & Fox-Decent's work at 334-335.

B.5 Failure to indicate that one footnote source in discursive footnote 71 was lifted verbatim from discursive footnote 9 of Tams; thus, even the idea being propounded in this discursive part of footnote 71 was presented as the *ponente*'s, instead of Criddle's & Fox-Decent's.

B.6 Failure to indicate that the last discursive sentence in footnote 71 and the citations thereof were not the *ponente*'s, but were lifted verbatim from footnote 9 of Criddle & Fox-Decent's work.

B.7 Failure to indicate that the first discursive sentence of footnote 72 was not the *ponente's*, but was lifted verbatim from page 335 of Criddle & Fox-Decent's work.

B.8 Failure to indicate that the second discursive sentence of footnote 72 was not the *ponente's*, but was lifted verbatim from pages 335-336 of Criddle and Fox-Decent's work.

B.9 Failure to indicate that the citation and the discursive passage thereon in the last sentence of footnote 72 was not the *ponente's*, but was lifted verbatim from discursive footnote 18 of Criddle & Fox-Decent's work.

B.10 Failure to use quotation marks to indicate that a phrase in the body of the decision on page 31 was not the *ponente's*, but was lifted verbatim from page 336 of Criddle & Fox-Decent's work.

B.11 Failure to indicate that the entirety of discursive footnote 73 was not the *ponente's*, but was lifted verbatim from page 336 of Criddle & Fox-Decent's work.

B.12 Failure to indicate that the idea of lack of "consensus on whether certain international norms had attained the status of *jus cogens*" was a paraphrase of a sentence combined with a verbatim lifting of a phrase that appears on page 336 of Criddle & Fox-Decent's work and was not the *ponente's* own conclusion. This is an example of patchwork plagiarism.

B.13 Failure to indicate that the entirety of discursive footnote 74 on page 31 of the Decision was not the *ponente's* comment on the source cited, but was lifted verbatim from footnote 23 of Criddle & Fox-Decent's work.

B.14 Failure to indicate through quotation marks and with the proper attribution to Criddle that the first two sentences of page 32 were not the *ponente's*, but were lifted verbatim from two non-adjoining sentences on pages 337-338 of Criddle & Fox-Decent's work.

B.15 Failure to indicate through quotation marks and the right citation that the discursive sentence in the second paragraph of footnote 77, and the citation therein, were not the *ponente's*, but were lifted verbatim from page 346 of the body of Criddle & Fox-Decent's work in the instance of the discursive sentence, and from footnote 72 of Criddle & Fox-Decent's work in the instance of the case cited and the description thereof.

B.16 Failure to indicate that the choice of citation and the discursive thereon statement in the second sentence of the second paragraph of discursive footnote 77 was not the *ponente's*, but was lifted verbatim from footnote 72 of Criddle & Fox-Decent's work.

B.17 Failure to indicate through quotation marks and the right citations that the entirety of the discursive third to fifth paragraphs of footnote 77 were not the product of the *ponente's* own analysis and choice of sources, but were lifted verbatim from footnotes 73 and 77 on pages 346-347 of Criddle & Fox-Decent's work.

C.1 to C.6 Failure to use quotation marks and the right citations to indicate that half of the long discursive footnote 65, including the sources cited therein, was actually comprised of the rearrangement, and in some parts, rephrasing of 18 sentences found on pages 227-228 of Mr. Ellis's work in *Case Western Law Reserve Journal of International Law*.

This painstaking part-by-part analysis of the *Vinuya* decision is prompted by the fact that so many, including international academicians, await the Court's action on this plagiarism charge % whether it will in all candor acknowledge that there is a set of conventions by which all intellectual work is to be judged and thus fulfill its role as an honest court; or blind itself to the unhappy work of its member.

The text of the Decision itself reveals the evidence of plagiarism. The tearful apology of the legal researcher to the family of the *ponente* and her acknowledgment of the gravity of the act of omitting attributions is an admission that something wrong was committed. Her admission that the correct attributions went missing in the process of her work is an admission of plagiarism. The evidence in the text of the *Vinuya* Decision and the acknowledgment by the legal researcher are sufficient for the determination of plagiarism.

**The Place of the Plagiarized Portions in the *Vinuya* Decision**

The suspect portions of the majority decision start from the discursive footnotes of the first full paragraph of page 27. In that paragraph, the idea sought to be developed was that while rape and sexual slavery may be morally reprehensible and impermissible by international legal norms, petitioners have failed to make the logical leap to conclude that the Philippines is thus under international legal duty to prosecute Japan for the said crime. The plagiarized work found in discursive footnote 65 largely consists of the exposition by Mr. Ellis of the development of the concept of rape as an international crime. The impression obtained by any reader is that the *ponente* has much to say about how this crime evolved in international law, and that he is an expert on this matter.

There are two intervening paragraphs before the next suspect portion of the decision. The latter starts from the second paragraph on page 30 and continues all the way up to the first paragraph of page 32. The discussion on the *erga omnes* obligation of states almost cannot exist, or at the very least cannot be sustained, without the plagiarized works of Messrs. Tams, Criddle and Decent-Fox. There is basis to say that the plagiarism of this portion is significant.

**How the Majority Decision Treated the Specific Allegations of Plagiarism**

The majority Decision narrates and explains:

"The researcher demonstrated by Power Point presentation how the attribution of the lifted passages to the writings of Criddle-Descent and Ellis, found in the beginning drafts of her report to Justice Del Castillo, were unintentionally deleted. She tearfully expressed remorse at her "grievous mistake" and grief for having "caused an enormous amount of suffering for Justice Del Castillo and his family."

On the other hand, addressing the Committee in reaction to the researcher's explanation, counsel for petitioners insisted that lack of intent is not a defense in plagiarism since all that is required is for a writer to acknowledge that certain words or language in his

work were taken from another's work. Counsel invoked the Court's ruling in *University of the Philippines Board of Regents v. Court of Appeals and Arokiaswamy William Margaret Celine,* arguing that standards on plagiarism in the academe should apply with more force to the judiciary.

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"… although Tams himself may have believed that the footnoting in his case was not "an appropriate form of referencing," he and petitioners cannot deny that the decision did attribute the source or sources of such passages. Justice Del Castillo did not pass off Tam's work as his own. The Justice primarily attributed the ideas embodied in the passages to Bruno Simma, whom Tam himself credited for them. Still, Footnote 69 mentioned, apart from Simma, Tam's article as another source of those ideas.

The Court believes that whether or not the footnote is sufficiently detailed, so as to satisfy the footnoting standards of counsel for petitioners is not an ethical matter but one concerning clarity of writing. The statement "*See* Tams, Enforcing Obligations *Erga Omnes* in International Law (2005)" in the *Vinuya* decision is an attribution no matter if Tams thought that it gave him somewhat less credit than he deserved. Such attribution altogether negates the idea that Justice Del Castillo passed off the challenged passages as his own.

That it would have been better had Justice Del Castillo used the introductory phrase "*cited in"* rather than the phrase "*See*" would make a case of mere inadvertent slip in attribution rather than a case of "manifest intellectual theft and outright plagiarism." If the Justice's citations were imprecise, it would just be a case of bad footnoting rather than one of theft or deceit. If it were otherwise, many would be target of abuse for every editorial error, for every mistake in citing pagination, and for every technical detail of form."

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"Footnote 65 appears down the bottom of the page. Since the lengthily passages in that footnote came almost verbatim from Ellis' article, such passages ought to have been introduced by an acknowledgement that they are from that article. The footnote could very well have read:

65 In an article, *Breaking the Silence: Rape as an International Crime*, Case Western Reserve Journal of International Law (2006), Mark Ellis said.) x x x

"But, as it happened, the acknowledgment above or a similar introduction was missing from Footnote 65.

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"Admittedly, the *Vinuya* decision lifted the above, including their footnotes, from Criddle-Descent's article, *A Fiduciary Theory of Jus Cogens.* Criddle-Descent's footnotes were carried into the *Vinuya* decision's own footnotes but no attributions were made to the two authors in those footnotes.

"Unless amply explained, the above lifting from the works of Ellis and Criddle-Descent could be construed as plagiarism. But one of Justice Del Castillo's researchers, a court-employed attorney, explained how she accidentally deleted the attributions, originally planted in the beginning drafts of her report to him, which report eventually became the working draft of the decision. She said that, for most parts, she did her research electronically. For international materials, she sourced these mainly from Westlaw, an online research service for legal and law-related materials to which the Court subscribes.

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"With the advent of computers, however as Justice Del Castillo's researcher also explained, most legal references, including the collection of decisions of the Court, are found in electronic diskettes or in internet websites that offer virtual libraries of books and articles. Here, as the researcher found items that were relevant to her assignment, she downloaded or copied them into her "main manuscript," a smorgasbord plate of materials that she thought she might need. The researcher's technique in this case is not too far different from that employed by a carpenter. The carpenter first gets the pieces of lumber he would need, choosing the kinds and sizes suitable to the object he has in mind, say a table. When ready, he would measure out the portions he needs, cut them out of the pieces of lumber he had collected, and construct his table. He would get rid of the scraps.

"Here, Justice Del Castillo's researcher did just that. She electronically "cut" relevant materials from books and journals in the Westlaw website and "pasted" these to a "main manuscript" in her computer that contained the Microsoft Word program. Later,

after she decided on the general shape that her report would take, she began pruning from that manuscript those materials that did not fit, changing the positions in the general scheme of those that remained, and adding and deleting paragraphs, sentences, and words as her continuing discussions with Justice Del Castillo, her chief editor, demanded. Parenthetically, this is the standard scheme that computer-literate court researchers use everyday in their work.

"Justice Del Castillo's researcher showed the Committee the early drafts of her report in the *Vinuya* case and these included the passages lifted from the separate articles of Criddle-Descent and of Ellis with proper attributions to these authors. But, as it happened, in the course of editing and cleaning up her draft, the researcher accidentally deleted the attributions.

"The Court adopts the Committee's finding that the researcher's explanation regarding the accidental removal of proper attributions to the three authors is credible. Given the operational properties of the Microsoft program in use by the Court, the accidental decapitation of attributions to sources of research materials is not remote."

Contrary to the view of my esteemed colleagues, the above is not a fair presentation of what happens in electronically generated writings aided by electronic research.

**First**, for a decision to make full attribution for lifted passages, one starts with block quote formatting or the "keying-in" of quotation marks at the beginning and at the end of the lifted passages. These keyed-in computer commands are **not** easily accidentally deleted, but should be **deliberately inputted** where there is an intention to quote and attribute.

**Second**, a beginning acknowledgment or similar introduction to a lengthy passage copied verbatim should **not** be accidentally deleted; it must be **deliberately placed**.

**Third**, the above explanation regarding the lines quoted in A.1 in the majority Decision may touch upon what happened in incident A.1, but it does not relate to what happened in incidents B.1 to C.6 of the Tables of Comparison, which are wholesale lifting of excerpts from both the body and the footnotes of the referenced works, without any attribution, specifically to the works of Criddle & Fox-Decent and of Ellis. While mention

was made of Tams's work, no mention was made at all of the works of Criddle & Fox-Decent and of Ellis even though the discussions and analyses in their discursive footnotes were used wholesale.

**Fourth**, the researcher's explanation regarding the accidental deletion of 2 footnotes out of 119 does not plausibly account for the extensive amount of text used with little to no modifications from the works of Criddle & Fox-Decent and Ellis. As was presented in Tables B and C, copied text occurs in 22 instances in pages 27, 31, and 32 of the *Vinuya* decision. All these instances of non-attribution cannot be remedied by the reinstatement of 2 footnotes.

**Fifth**, the mention of Tams in "See Tams, Enforcing Obligations *Erga omnes* in International Law (2005)" in footnote 69 of the *Vinuya* decision was not a mere insufficiency in "clarity of writing," but a case of plagiarism under the rule prohibiting the use of misleading citations.

**Sixth**, the analogy that was chosen — that of a carpenter who discards materials that do not fit into his carpentry work — is completely inappropriate. In the scheme of "cutting and pasting" that the researcher did during her work, it is standard practice for the original sources of the downloaded and copied materials to be regarded as integral parts of the excerpts, not extraneous or ill-fitting. A computer-generated document can accommodate as many quotation marks, explanatory notes, citations and attributions as the writer desires and in multiple places. The limits of most desktop computer drives, even those used in the Supreme Court, are in magnitudes of gigabytes and megabytes, capable of accommodating 200 to 400 books per gigabyte (with each book just consuming roughly 3 to 5 megabytes). The addition of a footnote to the amount of file space taken up by an electronic document is practically negligible. It is not as if the researcher lacked any electronic space; there was simply no attribution.

**Seventh**, contrary to what is implied in the statement on Microsoft Word's lack of an alarm and in paragraph 4 of the decretal portion of the majority Decision, no software exists

that will automatically type in quotation marks at the beginning and end of a passage that was lifted verbatim; these attribution marks must be made with deliberate effort by the human researcher. Nor can a software program generate the necessary citations without input from the human researcher. Neither is there a built-in software alarm that sounds every time attribution marks or citations are deleted. The best guarantee for works of high intellectual integrity is consistent, ethical practice in the writing habits of court researchers and judges. All lawyers are supposed to be knowledgeable on the standard of ethical practice, if they took their legal research courses in law school and their undergraduate research courses seriously. This knowledge can be easily picked up and updated by browsing many free online sources on the subject of writing standards. In addition, available on the market are software programs that can detect some, but not all, similarities in the phraseology of a work-in-progress with those in selected published materials; however, these programs cannot supply the citations on their own. Technology can help diminish instances of plagiarism by allowing supervisors of researchers to make partial audits of their work, but it is still the human writer who must decide to give the proper attribution and act on this decision.

**Plagiarism and Judicial Plagiarism**

Plagiarism is an act that does not depend merely on the nature of the object, *i.e.* what is plagiarized, but also hinges on the process, *i.e.* what has been done to the object. The elements of this process are the *act* of copying the plagiarized work and the subsequent *omission* in failing to attribute the work to its author.[15] Plagiarism thus does not consist solely of using the work of others in one's own work, but of the former *in conjunction with* the failure to attribute said work to its rightful owner and thereby, as in the case of written work, misrepresenting the work of another as one's own. As the work is another's and used without attribution, the plagiarist

[15] Stuart P. Green, *Plagiarism, Norms, and the Limits of Theft Law: Observations on the Use of Criminal Sanctions in Enforcing Intellectual Property Rights,* 54 HASTINGS L. J. 167, at 173.

derives the benefit of use from the plagiarized work without expending the requisite effort for the same — at a cost (as in the concept of "opportunity cost") to its author who could otherwise have gained credit for the work and whatever compensation for its use is deemed appropriate and necessary.

If the question of plagiarism, then, turns on a failure of attribution, judicial plagiarism in the case at bar "arises when judges author opinions that employ materials from copyrighted sources such as law journals or books, but neglect to give credit to the author."[16] Doing so effectively implies the staking of a claim on the copied work as the judge's own.[17] Note that there is no requirement of extent of copying or a minimum number of instances of unattributed usage for an act to be considered a plagiarist act, nor is the intent to deceive or to copy without attribution a prerequisite of plagiarism. In Dursht's exhaustive analysis of judicial plagiarism she cites the case of *Newman v. Burgin*[18] wherein the court said that plagiarism may be done "through negligence or recklessness without intent to deceive."[19] Dursht in addition notes that intent may also be taken as the intent to claim authorship of the copied work, whether or not there was intent to deceive, citing *Napolitano v. Trustees of Princeton Univ.*[20]

George describes the following among the types of judicial plagiarism:

***Borrowed Text:*** When quoting a legal periodical, law review, treatise or other such source, the judicial writer must surround the

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[16] Jaime S. Dursht, *Judicial Plagiarism: It May Be Fair Use but Is It Ethical?*, 18 Cardozo L. Rev. 1253, at 1.

[17] JOYCE C. GEORGE, *Judicial Plagiarism*, Judicial Opinion Writing Handbook, <http://books.google.com.ph/books?id=7jBZ4yjmgXUC&pg=PR1&hl=en&lpg=PR1#v=onepage&q&f=false> (accessed on 10/12/2010).

[18] *Newman v. Burgin*, 930 F.2d 955 (1st Cir.) as cited in Dursht, *supra* at 4 and note 60.

[19] *Newman v. Burgin, id.* at 962 as cited in Dursht, *id.* at 4 and note 61.

[20] 453 A.2d 279 (N.J. Super. Ct. Ch. Div. 1982) as cited in Dursht, *supra* at 1 and note 6.

borrowed text with quotation marks or use a block quote. . . . Additionally, the source should be referenced in the text . . .

Using another's language verbatim without using quotation marks or a block quote is intentional, as opposed to unintentional, plagiarism.

***Reference errors:*** The judge may fail to put quotation marks around a clause, phrase or paragraph that is a direct quote from another's writing even though he cites the author correctly. This is plagiarism even though it may be inadvertent.[21]

While indeed the notion of having committed judicial plagiarism may be unsettling to contemplate, as it may raise in the mind of a judge the question of his or her own culpability,[22] it is a grievous mistake to overlook the possibility of the commission of judicial plagiarism or the fact that judicial plagiarism is categorized by its very definition as a subset of plagiarism. That a judge, in lifting words from a source and failing to attribute said words to said source in the writing of a decision, committed specifically *judicial* plagiarism does not derogate from the nature of the act as a plagiarist act. Nor does any claim of inadvertence or lack of intent in the commission of a plagiarist act change the characterization of the act as plagiarism.

**Penalties for Plagiarism and Judicial Plagiarism**

In the academe, plagiarism is generally dealt with severely when found out; many universities have policies on plagiarism detailing the sanctions that may be imposed on students who are found to have plagiarized in their coursework and other academic requirements. These run the gamut from an automatic failing grade in the course for which the offending work was submitted, or in more egregious cases, outright expulsion from the university. Sanctions for plagiarism in the academe operate through "the denial of certification or recognition of achievement"[23] to the extent of rescinding or denying degrees.

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[21] George, *supra* at 715.

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

[23] Dursht, *supra* note 16 at 5.

In the case of law students who do manage to obtain their degrees, their admission to the bar may be hindered due to questions about their "character or fitness to practice law."[24] Indeed, plagiarism, due to the severity of the penalties it may incur, is often identified with the punishment of "academic death."[25] The academe justifies the harshness of the sanctions it imposes with the seriousness of the offense: plagiarism is seen not only to undermine the credibility and importance of scholarship, but also to deprive the rightful author of what is often one of the most valuable currencies in the academe: credit for intellectual achievement — an act of debasing the coinage, as it were. Thus the rules of many academic institutions sanctioning plagiarism as a violation of academic ethics and a serious offense often classed under the broader heading of "academic dishonesty."

The imposition of sanctions for acts of judicial plagiarism, however, is not as clear-cut. While George recognizes the lack of attribution as the fundamental mark of judicial plagiarism, she notes in the same breath that the act is "without legal sanction."[26] Past instances of censure notwithstanding (as in examples of condemnation of plagiarism cited by Lebovits, *et al.*[27] most particularly the censure of the actions of the judge who plagiarized a law-review article in *Brennan*;[28] the admonition

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[24] *In re Widdison*, 539 N.W.2d 671 (S.D. 1995) at 865, as cited in Dursht, *id.* at 5 and note 92.

[25] Rebecca Moore Howard, *Plagiarisms, Authorships, and the Academic Death Penalty*, 57 COLLEGE ENGLISH 7 (Nov., 1995), at 788-806, as cited in the JSTOR, http://www.jstor.org./stable/378403 (accessed on 02/05/2009, 17:56) 789.

[26] George, *supra* note 17 at 715.

[27] *Klinge v. Ithaca College*, 634 N.Y.S.2d 1000 (Sup. Ct. 1995), *Napolitano v. Trustees of Princeton Univ.*, 453 A.2d 279, 284 (N.J. Super. Ct. Ch. Div. 1987), and *In re Brennan*, 447 N.W.2d 712, 713-14 (Mich. 1989), as cited in Gerald Lebovits, Alifya v. Curtin & Lisa Solomon, *Ethical Judicial Opinion Writing*, 21 The Georgetown Journal of Legal Ethics 264, note 190.

[28] See *In re Brennan*, 447 N.W.2d 712, 713-14 (Mich. 1989) as cited in Lebovits, *et al.*, *supra* at note 191.

issued by the Canadian Federal Court of Appeal in the case of *Apotex)*[29] there is still no strictly prevailing consensus regarding the need or obligation to impose sanctions on judges who have committed acts of judicial plagiarism. This may be due in a large part to the absence of expectations of originality in the decisions penned by judges, as courts are required to "consider and usually . . . follow precedent."[30] In so fulfilling her obligations, it may become imperative for the judge to use "the legal reasoning and language [of others *e.g.* a supervising court or a law review article] for resolution of the dispute."[31] Although these obligations of the judicial writer must be acknowledged, care should be taken to consider that said obligations do not negate the need for attribution so as to avoid the commission of judicial plagiarism. Nor do said obligations diminish the fact that judicial plagiarism "detracts directly from the legitimacy of the judge's ruling and indirectly from the judiciary's legitimacy"[32] or that it falls far short of the high ethical standards to which judges must adhere.[33] The lack of definitiveness in sanctions for judicial plagiarism may also be due to the reluctance of judges themselves to confront the issue of plagiarism in the context of judicial writing; the apprehension caused by "feelings of guilt" being due to "the possibility that plagiarism has unknowingly or intentionally been committed" and a "traditional" hesitance to consider plagiarism as "being applicable to judicial writings."[34]

Findings of judicial plagiarism do not necessarily carry with them the imposition of sanctions, nor do they present unequivocal

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[29] *Apotex Inc. v. Janssen-Ortho Inc.*, 2009, as cited in Emir Aly Crowne-Mohammed, 22 No. 4 Intell. Prop. & Tech. L.J. 15, 1.

[30] Richard A. Posner, *The Little Book of Plagiarism,* 22 (2007), and Terri LeClercq, *Failure to Teach: Due Process and Law School Plagiarism,* 49 J. LEGAL EDUC., 240 (1999), as cited in Carol M. Bast and Linda B. Samuels, *Plagiarism and Legal Scholarship in the Age of Information Sharing: The Need for Intellectual Honesty,* 57 CATH. U.L. REV. 777, note 85.

[31] George, *supra* note 17 at 708.

[32] Lebovits, *supra* at 265.

[33] *See generally* Dursht; *supra* note 16; and Lebovits, *supra*.

[34] George, *supra* note 17 at 707

demands for rehearing or the reversal of rulings. In *Liggett Group, Inc., et al v. Harold M. Engle, M.D. et al.*[35] a U.S. tobacco class action suit, "[the] plaintiffs' counsel filed a motion for rehearing alleging that the appellate opinion copied large portions of the defendants' briefs . . . without attribution." The result of this, the plaintiffs claimed, was the creation of the "appearance of impropriety," the abdication of judicative duties, the relinquishing of independence to defendants, the failure to maintain impartiality, and therefore, as an act of judicial plagiarism, was "a misrepresentation of the facts found by the trial court and denied plaintiffs due process of law."[36] The three-judge panel denied the motion. In addition, "courts generally have been reluctant to reverse for the verbatim adoption of prepared findings."[37] In *Anderson v. City of Bessemer City, North Carolina*[38] it was held that even though the trial judge's findings of fact may have been adopted verbatim from the prevailing party, the findings "may be reversed only if clearly erroneous."[39]

**On Guilt and Hypocrisy**

It is not hypocrisy, contrary to what is implied in a statement in the majority Decision, to make a finding of plagiarism when plagiarism exists. To conclude thus is to condemn wholesale all the academic thesis committees, student disciplinary tribunals and editorial boards who have made it their business to ensure that no plagiarism is tolerated in their institutions and industry. In accepting those review and quality control responsibilities,

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[35] *Liggett Group, Inc. v. Engle*, 853 So. 2d 434 (Fla. Dist. Ct. App. 2003), as cited in Bast and Samuels, *supra* at note 102.

[36] *Id.*

[37] *Counihan v. Allstate Ins. Co.*, 194 F.3d at 363, as cited in Roger J. Miner, *Judicial Ethics in the Twenty-First Century: Tracing the Trends*, 32 HOFSTRA LAW REV. 1135, note 154.

[38] *Anderson v. City of Bessemer*, 470 U.S. 564, 572 (1985) as cited in Miner, *id.*

[39] *United States v. El Paso Natural Gas Co.*, p. 656, and *United States v. Marine Bancorporation*, p. 615, as cited in George, *supra* note 17 at 719.

they are not making themselves out to be error-free, but rather, they are exerting themselves to improve the level of honesty in the original works generated in their institution so that the coinage and currency of intellectual life — originality and the attribution of originality — is maintained. The incentive system of intellectual creation is made to work so that the whole society benefits from the encouraged output.

In the case of judicial plagiarism, it is entirely possible for judges to have violated the rules against plagiarism out of ignorance or from the sheer fact that in order to cope with their caseloads, they have to rely on researchers for part of the work. That would have been a very interesting argument to consider. But ignorance is not pleaded here, nor is the inability to supervise a legal researcher pleaded to escape liability on the part of the *ponente*. Rather, the defense was that no plagiarism existed. This conclusion however is unacceptable for the reasons stated above.

As noted above, writers have ventured to say that the reluctance to address judicial plagiarism may stem from fear, nay, guilt.[40] Fear that the judge who says plagiarism was committed by another is himself guilty of plagiarism. But that is neither here nor there. We must apply the conventions against judicial plagiarism because we must, having taken on that obligation when the Court took cognizance of the plagiarism complaint, not because any one of us is error-free. In fact, the statement on hypocrisy in the majority Decision betrays prejudgment of the complainants as hypocrites, and a complaint against a sitting judge for plagiarism would appear impossible to win.

In a certain sense, there should have been less incentive to plagiarize law review articles because the currency of judges is *stare decisis*. One wonders how the issue should have been treated had what was plagiarized been a court ruling, but that

[40] *See* Stuart P. Green, *Plagiarism, Norms, and the Limits of Theft Law: Observations on the Use of Criminal Sanctions in Enforcing Intellectual Property Rights*, 54 HASTINGS L. J. 167; and Peter Shaw, *Plagiary*, 51 Am. Scholar 325, 328 (1982); and Green, *supra* at 180 as cited in George, *supra* at note 1.

is not at issue here. The analysis in this opinion is therefore confined to the peculiar situation of a judge who issues a decision that plagiarizes law review articles, not to his copying of precedents or parts of the pleadings of the parties to a case.

As earlier said, a determination of the existence of plagiarism in decision-making is not conclusive on the disciplinary measure to be imposed. Different jurisdictions have different treatments. At the very least however, the process of rectification must start from an acknowledgment and apology for the offense. After such have been done, then consideration of the circumstances that mitigate the offense are weighed. But not before then.

**The Unfortunate Result of the Majority Decision**

Unless reconsidered, this Court would unfortunately be remembered as the Court that made "malicious intent" an indispensable element of plagiarism and that made computer-keying errors an exculpatory fact in charges of plagiarism, without clarifying whether its ruling applies only to situations of judicial decision-making or to other written intellectual activity. It will also weaken this Court's disciplinary authority — the essence of which proceeds from its moral authority — over the bench and bar. In a real sense, this Court has rendered tenuous its ability to positively educate and influence the future of intellectual and academic discourse.

**The Way Forward**

Assuming that the Court had found that judicial plagiarism had indeed been committed in the *Vinuya* decision, the Court could then have moved to the next logical question: what then is the legal responsibility of the *ponente* of the *Vinuya* decision for having passed on to the Court *en banc* a *ponencia* that contains plagiarized parts?

There would have been at that point two possible choices for the Court *vis-à-vis* the *ponente* — to subject him to disciplinary measures **or** to excuse him. In order to determine whether the acts committed would have warranted discipline, the Court

should have laid down the standard of diligence and responsibility that a judge has over his actions, as well as the disciplinary measures that are available and appropriate.

The Court could also have chosen to attribute liability to the researcher who had admitted to have caused the plagiarism. In *In re Hinden*, disciplinary measures were imposed on an attorney who plagiarized law review articles.[41]

**Response to the Decretal Portion of the Majority Decision**

In view of the above, it is my opinion:

1.That Justice Mariano C. del Castillo and his unnamed researcher have committed plagiarism in the drafting and passing on of the *ponencia* in the *Vinuya* decision;

2.That this Court should request Justice del Castillo to acknowledge the plagiarism and apologize to the complaining authors for his mistake;

3.That this Court should cause the issuance of a corrected version of the *Vinuya* decision in the form of a "Corrigendum";

4.That court attorneys should be provided with the appropriate manuals on writing and legal citation, and should be informed that the excerpts complained of and described in Tables A, B, and C of this opinion are acts of plagiarism and not mere editing errors or computer-generated mistakes;

5.That the refusal of the majority to pronounce that plagiarism was committed by Justice del Castillo means that any judicial opinion on his liability or that of his researcher would be academic and speculative, a ruling which this Dissenting Opinion will not venture to make a pronouncement on; and

6.That a copy of this Dissenting Opinion should be circulated by the Public Information Office in the same manner as the Majority Decision to the complaining authors Christian J. Tams, Mark Ellis, Evan Criddle and Evan Fox-Decent.

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[41] *In re Hinden*, 654 A.2d 864 (1995) (U.S.A.).

**EN BANC**

[A.M. No. P-06-2287. October 12, 2010]
(Formerly A.M. No. 06-11391-MTC)

**OFFICE OF THE COURT ADMINISTRATOR,** *complainant, vs.* **MARCELA V. SANTOS, CLERK OF COURT II, MUNICIPAL TRIAL COURT, SAN LEONARDO, NUEVA ECIJA,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; PUBLIC OFFICERS; ABSENCE WITHOUT LEAVE; CASE AT BAR.—** To date, the Court is not aware of the whereabouts of respondent who failed to comply with the Court's Resolution of October 8, 2007. She was last heard on March 7, 2007 when she filed her March 7, 2007 explanation, pertinent portions of which were quoted above.

**2. ID.; CONSTITUTIONAL LAW; JUDICIARY; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER LOWER COURTS; ADMINISTRATIVE CHARGE AGAINST LOWER COURT PERSONNEL; WHEN CONSIDERED SUBMITTED FOR DECISION; CASE AT BAR.—** Acting on the March 29, 2010 Memorandum of the OCA, the Court, by Resolution of July 28, 2010, resolved to determine the liabilities of respondent on the basis of the records.

**3. ID.; ID.; ID.; ID.; ID.; ID.; FINDINGS OF FACT; CASE AT BAR.—** The Court finds that, indeed, respondent failed to *regularly* submit monthly reports of collections and deposits, as required by SC Circular No. 32-93, and official receipts and other documents, despite this Court's repeated orders.

**4. ID.; ID.; ID.; ID.; ID.; ID.; THE FAILURE TO REMIT THE FUNDS IN DUE TIME AMOUNTS TO DISHONESTY AND GRAVE MISCONDUCT; CASE AT BAR.—** In incurring shortage of accountabilities in the amount of ₱326,900, respondent is guilty of gross dishonesty and grave misconduct. "[N]o position demands greater moral righteousness and uprightness from the occupant than does the judicial office.

The safekeeping of funds and collections is essential to the goal of an orderly administration of justice, and protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds. The failure to remit the funds in due time amounts to dishonesty and grave misconduct, which the Court cannot tolerate for they diminish the people's faith in the judiciary. The act of misappropriating judiciary funds constitutes dishonest and grave misconduct which are punishable by dismissal from the service even if committed for the first time.

**5. ID.; PUBLIC OFFICERS; JUDICIARY; CLERK OF COURT; ACCOUNTABLE FOR THE COURT'S MONEY.—** It can never be overemphasized that a clerk of court, like respondent, is responsible for court records and physical facilities of the court and is accountable for the court's money and property deposits, following Section B, Chapter 1 of the 1991 Manual for Clerks of Court and 2002 Revised Manual for Clerks of Court.

**6. ID.; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISION; ADMINISTRATIVE CASES CONCERNING GOVERNMENT PERSONNEL; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES; GROSS MISCONDUCT AND DISHONESTY; PENALTY.—** Under Section 23 of Rule XIV of the Omnibus Rules implementing Book V of Executive Order 292 and other pertinent Civil Service Laws, gross misconduct and dishonesty are both punishable by DISMISSAL from the service.

## D E C I S I O N

***PER CURIAM*:**

The Financial Audit Team of the Office of the Court Administrator (OCA) conducted an audit at the Office of the Clerk of Court (OCC), Municipal Trial Court (MTC), San Leonardo, Nueva Ecija covering the accountability period from April 1, 1997 to May 31, 2006 of Marcela V. Santos, Clerk of Court II (respondent).

The audit team came up with the following findings:

I. MISSING OFFICIAL RECEIPTS[1]

1. SC O.R. No. I-799-2001-799050
2. SC O.R. No. II-7992051-7992100
3. SC O.R. No. IV-21701401-21701450

II. UNSUBMITTED MONTHLY REPORTS OF COLLECTIONS AND DEPOSITS[2]

| | |
|---|---|
| For Fiduciary Fund | May 2003 to June 2003; |
| | October 2003 to March 2006 |
| For SAJ | November 2004 to March 2006 |
| For JDF | March 2003 |
| | November 2003 to March 2006 |

III. GENERAL FUND (CoCGF)[3]

| | | |
|---|---|---|
| Total Collections – January 1, 1998 to November 10, 2003 | ₱ | 26,830.40 |
| Total Deposit – January 1, 1998 to November 10, 2003 | | 26,827.40 |
| **Balance – Shortage** | ₱ | **3.00** |

IV. SPECIAL ALLOWANCE FOR THE JUDICIARY FUND[4]

| | | |
|---|---|---|
| Total Collections November 11, 2003 to May 31, 2006 | ₱ | 10,066.80 |
| Total Deposit November 11, 2003 to May 31, 2006 | | 10,642.80 |
| **Balance – Shortage** | ₱ | **19,424.00** |

V. JUDICIARY DEVELOPMENT FUND (JDF)[5]

| | | |
|---|---|---|
| Total Collections – June 1, 1997 to May 31, 2006 | ₱ | 87,185.00 |
| Total Deposit – June 1, 1997 to May 31, 2006 | | 60,503.80 |
| **Balance – Shortage** | ₱ | **26,681.20** |

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[1] *Rollo*, p. 6.

[2] *Ibid.*

[3] *Ibid.*

[4] *Ibid.*

[5] *Id.* at 7.

VI. FIDUCIARY FUND[6]

| | | |
|---|---|---|
| Beginning Balance per SUFF date June 19, 1997 | ₱ | 56,600.00 |
| Add: Total Collections for April 1, 1997 to May 31, 2006 | | 452,600.00 |
| Less: Total Withdrawals for April 1, 1997 to May 31, 2006 | | 178,100.00 |
| Total Unwithdrawn Fiduciary Fund as of May 31, 2006 | ₱ | 331,100.00 |
| | | |
| Bank Balance as of May 31, 2006 | | 7,614.65 |
| Less: Unwithdrawn Interest (net of tax 603.70) | | 2,414.65 |
| Adjusted Bank Balance as of May 31, 2006 | | 5,200.00 |
| | | |
| Unwithdrawn Fiduciary Fund as of May 31, 2006 | | 331,100.00 |
| Adjusted Bank Balance as of May 31, 2006 | | 5,200.00 |
| **Balance of Accountability – Shortage** | **₱** | **325,900.00** |

VII. UNSUPPORTED WITHDRAWN CASH BOND[7]

| Case No. | Name of Litigants | Documents Lacking |
|---|---|---|
| 84/85-94 | Amelia Vallarta | Acknowledgment Receipt |
| 12-95 | Francisco Ingal | Court Order |
| 92-99 | Eric Garcia | Acknowledgment Receipt |
| | | Court Order |
| 104-00 | Zoilo Ngo | Acknowledgment Receipt |
| 11-03 | Nida Manaois | Acknowledgment Receipt |

VIII. EARNED INTEREST FROM SAVINGS ACCOUNT No. 1531-0427-23 NOT YET TRANSFERRED TO THE JDF ACCOUNT[8]

| PERIOD COVERED | GROSS INTEREST | WITHHOLDING TAX | NET INTEREST |
|---|---|---|---|
| 30-Jun-99 | 4.56 | 0.91 | 3.65 |
| 30-Sep-99 | 5.23 | 1.05 | 4.18 |
| 31-Dec-99 | - | | - |
| 31-Mar-00 | 52.39 | 10.48 | 41.91 |
| 30-Jun-00 | 179.86 | 35.97 | 143.89 |

[6] *Id.* at 7.

[7] *Id.* at 8.

[8] *Ibid.*

| | | | |
|---|---|---|---|
| 30-Sep-00 | 209.52 | 41.90 | 167.62 |
| 31-Dec-00 | 210.38 | 42.08 | 168.30 |
| 31-Mar-01 | 206.65 | 41.33 | 165.32 |
| 30-Jun-01 | 209.78 | 41.96 | 167.82 |
| 30-Sep-01 | 188.74 | 37.75 | 150.99 |
| 31-Dec-01 | 179.98 | 36.00 | 143.98 |
| 31-Mar-02 | 130.68 | 26.14 | 104.54 |
| 30-Jun-02 | 107.16 | 21.43 | 85.73 |
| 30-Sep-02 | 65.29 | 13.06 | 52.23 |
| 31-Dec-02 | 65.42 | 13.08 | 52.34 |
| 31-Mar -03 | 136.33 | 27.27 | 109.06 |
| 30-Jun-03 | 207.93 | 41.59 | 166.34 |
| 30-Sept-03 | 195.54 | 39.11 | 156.43 |
| 31-Dec-03 | 146.77 | 29.35 | 117.42 |
| 31-Mar-04 | 123.94 | 24.79 | 99.15 |
| 30-Jun-04 | 92.38 | 18.48 | 73.90 |
| 30-Sep-04 | 87.84 | 17.57 | 70.27 |
| 31-Dec-04 | 88.03 | 17.61 | 70.42 |
| 31-Mar-05 | 88.54 | 17.71 | 70.83 |
| 30-Jun-05 | 29.29 | 5.86 | 23.43 |
| 30-Sep-05 | 6.12 | 1.22 | 4.90 |
| 31-Dec-05 | - | - | - |
| 31-Mar-06 | - | - | - |
| **TOTAL** | **₱ 3,018.35** | **₱ 603.70** | **₱ 2,414.65** |

IX. PHILIPPINE MEDIATION FUND[9]

| | | |
|---|---|---|
| Total Collections – August 1, 2004 to May 31, 2006 | ₱ | 10,000.00 |
| Total Deposit – August 1, 2004 to May 31, 2006 | | 250.00 |
| **Balance – Shortage** | **₱** | **9,750.00** |

X. SUMMARY OF TOTAL ACCOUNTABILITY[10]

| | | |
|---|---|---|
| For General Fund | ₱ | 3.00 |
| For Special Allowance for the Judiciary Fund | | 19,424.00 |
| For Judiciary Development Fund | | 26,681.20 |
| For Philippine Mediation Fund | | 9,750.00 |
| For Sheriff Trust Fund/Process Server's Fee | | 1,000.00 |
| For Fiduciary Fund | ₱ | 325,900.00 |
| **TOTAL** | ₱ | **382,758.20** |

[9] *Id.* at 9.

[10] *Ibid.*

Acting on the report and recommendation of the OCA, the Court, by Resolution of January 15, 2007,[11] resolved to

1. **REDOCKET** the instant report as regular administrative complaint against Mrs. Marcela V. Santos, Clerk of Court II, Municipal Trial Court, San Leonardo, Nueva Ecija;

2. **DIRECT** Clerk of Court Marcela V. Santos, within ten (10) days from notice, to:

    a. RESTITUTE the amount of ₱325,900.00 and ₱1,000.00 representing her balance of accountability for Fiduciary Fund and Sheriff Trust Find/Process Server's Fee, respectively;

    b. WITHDRAW the interest earned on deposits of Fiduciary Fund in the total amount of ₱2,414.65, deposit the same to the account of the JDF, and submit to the Fiscal Monitoring Division, Court Management Office, OCA, the machine validated deposit slip relative thereto; and

    c. SUBMIT to the Fiscal Monitoring Division, Court Management Office, OCA, the original copies of the 3 booklets of unaccounted Official Receipts.

3. **SUSPEND** Clerk of Court Marcela V. Santos from the service pending resolution of the administrative matter;

4. **DIRECT** Acting Collecting Officer Ms. Leonida A. Ladisla to strictly comply with all courts circulars and issuances in the proper handling of Judiciary Funds; and

5. **DIRECT** Hon. Rixon M. Garong, Presiding Judge, to study and implement procedures that will strengthen the internal control over cash transactions of the court.

x x x[12] (emphasis in the original; underscoring supplied)

In her March 7, 2007 explanation,[13] respondent stated:

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[11] *Id.* at 23-24.

[12] *Ibid.*

[13] *Id.* at 51-53.

x x x x x x x x x

3. With much apologies, the undersigned is very sorry for the problem of shortages and lost receipts. However, she is not to be blamed in the incident because the same were brought about by the flood caused by numerous typhoons that devastated their province in the year 1998 and 2004;

4. To prove and clear all her accountabilities, the undersigned will be presenting documents, records and other evidence to give light to the shortages. However, if the same does not satisfactorily cover the whole amount of ₱325,900.00 for Fiduciary Fund and ₱1,000.00 for Sheriff Trust Fund/Process Server's Fee, she will pay the remaining shortages;

5. As to the original copies of the three (3) booklets of unaccounted Official Receipts, undersigned failed to retrieve all the receipts, after the same were destroyed by flood caused by typhoon. However, she will be presenting all the receipts she had successfully retrieved and will present certifications from those who posted cashbonds that they had released and released the same;

x x x (underscoring supplied)

The OCA, by Memorandum of August 22, 2007,[14] thereupon evaluated the complaint as follows:

x x x x x x x x x

Based on the Report dated November 14, 2006, of the OCA Audit Team, respondent Santos' summary of accountabilities is as follows:

| | |
|---|---|
| General Fund | ₱ 3.00 |
| Special Allowance for the Judiciary Fund (SAJF) | 19,424.00 |
| Judiciary Development Fund (JDF) | 26,681.20 |
| Philippine Mediation Fund | 9,750.00 |
| Sheriff Trust Fund/Process Server's Fee | 1,000.00 |
| Fiduciary Fund | 325,900.00 |
| **Total** | **₱ 382,758.20** |

The General Fund shortage was restituted by respondent on July 21, 2006.

[14] *Id.* at 60-65.

The SAJF shortage of ₱19,424.00 was the result of respondent's failure to remit her collections from April 2005 to May 2006, **in violation of** Amended Administrative Circular No. 35-2005. The amount was restituted by respondent on July 17, 2006.

The JDF's shortage corresponds to respondent's collections of said account for the period November 2003 to March 2006. Respondent restituted the amount on July 17, 2006.

The last entry in the Mediation Fund cashbook was for the month of November 2004 and the court's file of Monthly Reports of Collections and Deposit for the said fund was for October 2004 only. Evidently, the financial records of the Mediation Fund was taken for granted in violation of A.M. No. 01-10-5-SC-PHILJA. Respondent restituted the ₱9,750.00 shortage on July 17, 2006.

Only one process server's fee in the amount of ₱1,000.00 was collected by respondent based on the official receipt issued for the said account. The OR used by respondent was for the Mediation Fund Account.

The Fiduciary Fund shortage of ₱325,900.00 was also the result of respondent's **failure to deposit her collections** of said account **in violation of Circular NO. 13-92**, which mandates the Clerks of Courts concerned to deposit, with an authorized government depositary bank, immediately or within 24 hours upon receipt of all collections from bail bonds, rental deposits and other fiduciary collections. Respondent failed to comply with said directive despite the fact that the court's depositary bank is in Gapan City, Nueva Ecija which is less than an hour from the MTC, San Leonardo, Nueva Ecija.

The audit team also observed that the cash bonds for the following cases were **withdrawn without the required supporting documents**, to wit:

| Case No. | Name of Litigants | Documents Lacking |
|---|---|---|
| 84/85-94 | Amelia Vallarta | Acknowledgment Receipt |
| 12-95 | Francisco Ingal | Court Order |
| 92-99 | Eric Garcia | Acknowledgment Receipt<br>Court Order |

| | | |
|---|---|---|
| 104-00 | Zoilo Ngo | Acknowledgment Receipt |
| 11-03 | Nida Manaois | Acknowledgment Receipt |

**The three (3) booklets of OR's that are unaccounted or missing are the following**: SC OR Nos. I-7992001-799050, II-7992051-7992100 and IV-21701401-21701450.

Respondent's **failure to regularly submit monthly reports of collections and deposits** as mandated by SC Circular No. 32-93 prompted the Accounting Division, Financial Management Office, OCA to withhold her salaries. Below is the list of respondent's unsubmitted reports:

| | |
|---|---|
| For Fiduciary Fund | May 2003 to June 2003; |
| | October 2003 to March 2006 |
| For SAJ | November 2004 to March 2006 |
| For JDF | March 2003 |
| | November 2003 to March 2006 |

Respondent requests for a recomputation of her accountabilities in view of the restitutions she made. Notably, the total amount she had restituted has already been deducted from her total accountability. Thus, only the shortages for the fiduciary fund and sheriff trust fund/ process server's fee were ordered by the Court to be restituted. (emphasis and underscoring supplied)

THE OCA CONCLUDED/RECOMMENDED:

In view of the foregoing, only a partial suspension of the Court's January 15, 2007 Resolution is in order, *i.e.*, particularly the directive to respondent Santos to restitute the amount of ₱325,900.00 and ₱1,000.00 representing her balance of accountability for Fiduciary Fund and Sheriff Trust Fund/Process Server's Fee, respectively; and, the directive to submit to the Fiscal Monitoring Division, Court Management Office (CMO), OCA, the original copies of the 3 booklets of unaccounted OR's. This is in order to give respondent the final opportunity to produce and present her evidence. In this connection, respondent Santos should be given ten (10) days from notice within which to **present** to the Fiscal Monitoring Division, CMO, OCA **all the documents, records and other evidence pertaining to her shortages and the 3 booklets of unaccounted OR's**. (emphasis and underscoring supplied)

Acting on the recommendation of the OCA, the Court, by Resolution of October 8, 2007,[15] resolved to:

1. **REQUIRE** respondent to **MANIFEST** to the Court whether she is willing to submit this matter for resolution on the basis of the pleadings filed within ten (10) days from notice;

2. **DIRECT** Mrs. Marcela V. Santos to **PRODUCE** and **PRESENT** before the Fiscal Monitoring Division, Court Management Office (CMO), OCA, within ten (10) days from notice: all the "documents, records and other evidence" pertaining to her shortages on the Fiduciary Fund and Sheriff Trust Fund/Process Server's Fee, as well as the evidence on the original copies of the three (3) booklets of unaccounted or missing Supreme Court Official Receipts;

3. **DIRECT** the Fiscal Monitoring Division, CMO, OCA to **REPORT** to the Court, with the necessary **RECOMMENDATION**, on respondent Santos' presentation of evidence, stating clearly the resulting balance of her accountabilities on the Fiduciary Fund and Sheriff Trust Fund/Process Server's Fee, should there still be any, and her accountability on the missing official receipts, within fifteen (15) days after respondent Santos' presentation of evidence;

4. **DIRECT** Acting Collecting Officer Ms. Leonida A. Ladisla to:

   (a) **WITHDRAW** the interest earned on deposits of Fiduciary Fund in the total amount of ₱2,414.65, **DEPOSIT** the same to the account of the JDF, and **SUBMIT** to the Fiscal Monitoring Division, Court Management Office, OCA, the corresponding machine validated deposit slip, within ten (10) days from notice; and

   (b) **STRICTLY COMPLY** with all court circulars and issuances in the proper handling of Judiciary Funds; and

5. **DIRECT** Hon. Rixon M. Garong, Presiding Judge, to study and implement procedures that will strengthen the internal control over the cash transactions of the court.[16] (emphasis in the original)

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[15] *Id.* at 66-67.

[16] *Ibid.*

To date, the Court is not aware of the whereabouts of respondent who failed to comply with the Court's Resolution of October 8, 2007.[17] She was last heard on March 7, 2007 when she filed her March 7, 2007 explanation,[18] pertinent portions of which were quoted above.

Acting on the March 29, 2010[19] Memorandum of the OCA, the Court, by Resolution of July 28, 2010,[20] resolved to determine the liabilities of respondent on the basis of the records.

The Court finds that, indeed, respondent failed to *regularly* submit monthly reports of collections and deposits, as required by SC Circular No. 32-93, and official receipts and other documents, despite this Court's repeated orders. In incurring shortage of accountabilities in the amount of ₱326,900, respondent is guilty of gross dishonesty and grave misconduct.

> [N]o position demands greater moral righteousness and uprightness from the occupant than does the judicial office. The safekeeping of funds and collections is essential to the goal of an orderly administration of justice, and protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds. The failure to remit the funds in due time amounts to dishonesty and grave misconduct, which the Court cannot tolerate for they diminish the people's faith in the judiciary. The act of misappropriating judiciary funds constitutes dishonest and grave misconduct which are punishable by dismissal from the service even if committed for the first time.[21] (underscoring supplied)

It can never be overemphasized that a clerk of court, like respondent, is responsible for court records and physical facilities of the court and is accountable for the court's money and property deposits, following Section B, Chapter 1 of the 1991 Manual

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[17] *Ibid.*

[18] *Id.* at 51-53.

[19] *Id.* at 107-109.

[20] *Id.* at 111-112.

[21] *OCA v. Nolasco*, A.M. No. P-06-2148, March 4, 2009, 580 SCRA 471, 487.

for Clerks of Court and 2002 Revised Manual for Clerks of Court.[22]

Under Section 23 of Rule XIV of the Omnibus Rules implementing Book V of Executive Order 292 and other pertinent Civil Service Laws, gross misconduct and dishonesty are both punishable by DISMISSAL from the service.

**WHEREFORE,** respondent, Marcela V. Santos, Clerk of Court II, Municipal Trial Court of San Leonardo, Nueva Ecija, is declared *GUILTY* of Gross Dishonesty and Grave Misconduct. She is ordered *DISMISSED* from the service with forfeiture of all retirement benefits, excluding accrued leave credits, and with prejudice to reemployment in any government office including government-owned and controlled corporations.

For failure to return the required documents despite repeated orders of the Court, respondent is likewise declared *GUILTY* of contempt of court. She is ordered to pay a *FINE* of Five Thousand Pesos (₱5,000) and to submit all the required documents to the Office of the Court Administrator within thirty days from receipt of this Decision.

The Fiscal Management Office, Office of the Court Administrator, is *DIRECTED* to process the terminal leave benefits of respondent with dispatch and apply the same to her accountabilities, giving priority to the Fiduciary Fund Account of the Municipal Trial Court of San Leonardo, Nueva Ecija.

Upon submission of the missing documents by respondent, the Fiscal Management Office is *DIRECTED* to compute the remaining accountabilities of respondent, if any, and to submit a report thereon within thirty days from compliance by respondent.

Respondent is further ordered to *RESTITUTE* the amount of Three Hundred Twenty Five Thousand Nine Hundred Pesos (₱325,900) representing shortage in the Fiduciary Fund, and One Thousand Pesos (₱1,000) representing shortage of the Sheriff Trust Fund/Process Server's Fee.

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[22] *OCA v. Canque*, A.M. No. P-04-1830, June 4, 2009, 588 SCRA 226, 235.

Finally, the Office of the Court Administrator is *DIRECTED* to initiate appropriate criminal proceedings against respondent in light of the above findings of the Court.

**SO ORDERED.**

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

*Carpio* and *Abad, JJ.,* on official leave.

*Peralta, J.,* is on leave.

*Perez, J.,* no part.

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**EN BANC**

[A.M. No. P-09-2735. October 12, 2010]
(Formerly OCA I.P.I. No. 07-2614-P)

**LEVI M. ARGOSO,** *complainant, vs.* **ACHILLES ANDREW REGALADO II, Sheriff IV, Regional Trial Court, Office of the Clerk of Court, Naga City,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SUPRME COURT; ADMINISTRATIVE SUPERVISION OVER LOWER COURTS; SHERIFFS; PROPER PROCEDURE IN ENFORCING WRITS OF EXECUTION; A.M. NO. P-10-2772, FEBRUARY 16, 2010; ACHILLES ANDREW REGALADO II; SUSPENDED FROM THE SERVICE FOR ONE (1) YEAR WITHOUT PAY, WITH A STERN WARNING THAT A REPETITION OF THE SAME OFFENSE SHALL BE DEALT WITH MORE SEVERELY.—** In A.M. No. P-10-2772, entitled *Domingo Peña, Jr. v. Achilles*

*Andrew V. Regalado II* that we decided on February 16, 2010, we found Regalado guilty of conduct prejudicial to the best interest of the service for not following the proper procedure in enforcing writs of execution. In that case, the judgment on execution ordered complainant Peña to pay a fine and damages to Flora Francisco. Peña alleged, among others, that Regalado collected from him ₱13,000.00 but Regalado issued only a handwritten acknowledgment receipt, not an official receipt. During the investigation, Regalado confessed that he did not remit to the Office of the Clerk of Court the money from Peña to spare Francisco, who was quite old, the inconvenience of filing a motion to release the money, and that Francisco was not around that day so he gave the ₱13,000.00 to her the next day. He also said that he had been a sheriff for 12 years and had followed the same procedure in some of the cases assigned to him for execution. Regalado also collected from Peña ₱4,500.00 and ₱2,000.00 but it took two years, and the intervention of the judge, before Regalado remitted the amounts to Francisco. For his wrongful actions, we suspended Regalado from the service for one (1) year without pay, with a stern warning that a repetition of the same offense shall be dealt with more severely.

**2. ID.; ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, REGALADO ALSO RECEIVED MONEY FROM THE COMPLAINANT ARGOSO TO IMPLEMENT A WRIT OF EXECUTION.—** This case filed by Argoso against Regalado, also involves money received by Regalado from an interested party to implement a writ of execution. Regalado should not have received money from Argoso for his transportation to Daet, without previously submitting his expenses for the court's approval.

**3. ID.; ID.; ID.; ID.; ID.; ID.; NOT FOLLOWING THE PROPER PROCEDURE IS CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; CASE AT BAR.—** Regalado's admission that he received money without complying with the proper procedure in enforcing writs of execution, made him guilty of conduct prejudicial to the best interest of the service.

**4. ID.; ID.; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISION; ADMINISTRATIVE CASES CONCERNING GOVERNMENT PERSONNEL; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE;**

**CLASSIFICATION; PENALTY.—** Section 52(A)(20) of the Revised Uniform Rules on Administrative Cases classifies conduct prejudicial to the best interest of the service as a grave offense, punishable by suspension of six months and one day to one year for the first offense, and by dismissal for the second offense.

**5. ID.; ID.; JUDICIARY; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER LOWER COURTS; SHERIFFS; PROPER PROCEDURE IN ENFORCING WRITS OF EXECUTION; A.M. NO. P-10-2772, FEBRUARY 16, 2010; ACHILLES ANDREW REGALADO II; SUSPENDED FROM THE SERVICE FOR ONE (1) YEAR WITHOUT PAY, WITH A STERN WARNING THAT A REPETITION OF THE SAME OFFENSE SHALL BE DEALT WITH MORE SEVERELY; IN THE CASE AT BAR, RESPONDENT SHERIFF IS DISMISSED FROM THE SERVICE.—** This is Regalado's second administrative case for failing to follow the proper procedure in enforcing writs of execution; this metes him the penalty of dismissal from the service.

## D E C I S I O N

***PER CURIAM:***

On April 2, 2007, Levi M. Argoso wrote a letter[1] to the Court Administrator asking that Sheriff IV Achilles Andrew V. Regalado II be held administratively liable for acts unbecoming a sheriff.

Regalado was the sheriff tasked to serve the writ of execution for the return of a land title in Civil Case No. RTC-91-2454 entitled "*Re: Heirs of Adelaida Vicente-Argoso v. Development Bank of the Philippines, et al.*" In his letter, Argoso recounted several incidents when Regalado asked him for money, allegedly for travel in connection with the case, and, at other times, for drinks and "pulutan" for Regalado's friends:

1. November 6, 2006 – ₱1,000.00 for traveling allowance to the Development Bank of the Philippines-Daet Branch (*DBP-Daet*);

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

2. December 2006 – ₱800.00 for travel to DBP-Daet;

3. February 7, 2007 – ₱740.00 for drinks and "pulutan." Argoso gave him Land Bank of the Philippines check no. 179739;

4. March 9, 2007 – ₱300.00 for drinks and "*pulutan*."[2]

Regalado denied these allegations in his comment[3] and asserted that he never extorted money from Argoso.

Upon the recommendation of the Office of the Court Administrator (*OCA*), we referred the matter to the Naga City Regional Trial Court (*RTC*) executive judge for investigation, report and recommendation.[4]

The OCA reported the following findings[5] of the Naga City RTC executive judge:[6]

1. Argoso died on January 12, 2008, but the investigating judge continued his investigation to gather additional information;

2. A writ of execution was issued in Civil Case No. 91-2454 that was assigned to sheriff Regalado for implementation;

3. Regalado admitted that he received money from Argoso that he used for his travel to DBP-Daet;

4. The DBP-Daet bank manager confirmed that Regalado went to the bank to secure a copy of the owner's duplicate copy of OCT No. 6297 as directed in the writ of execution. Regalado's evidence proved that he went to DBP-Daet thrice.

5. Regalado did not prepare any estimated sheriff's expense duly approved by the judge, allegedly upon Argoso's wish, as it would unduly delay the withdrawal of money from the Office of the Clerk of Court; and

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[2] *Id*. at 103-104.

[3] Dated October 1, 2007; *id*. at 12-16.

[4] *Id*. at 28-29.

[5] *Id*. at 98-100.

[6] Judge Jaime E. Contreras.

6. Regalado violated Supreme Court Administrative Circular No. 35-04 dated August 12, 2004,[7] prescribing the procedure for the payment of expenses that might be incurred in implementing the writ. The investigating judge recommended that Regalado be strongly admonished, with a warning that the commission of the same or similar act shall be dealt with more severely.

The OCA found the recommended penalty too light. The OCA cited Section 10, Rule 141 of the Rules of Court[8] that requires a sheriff implementing a writ, to provide an estimate of the expenses to be incurred, subject to approval by the court. Upon approval, the interested party shall then deposit the amount with the clerk of court and *ex-officio* sheriff. The money shall be disbursed to the assigned deputy sheriff, subject to liquidation upon the return of the writ; any unspent amount shall be returned to the interested party.

Regalado admitted that he did not prepare any estimated sheriff's expense duly approved by the judge. For his failure to comply with the requirements of Rule 141 of the Rules of Court, the OCA found him guilty of serious violation of existing rules that the OCA classified as a less grave offense under Rule IV of the Uniform Rules on Administrative Cases in the Civil Service. Since this was Regalado's first offense, the OCA recommended the penalty of suspension for one (1) month and

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[7] *Rollo,* pp. 99-100.

[8] Rule 141, Section 10. Sheriffs, Process Servers and other persons serving processes. —xxx With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

one (1) day without pay, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

In A.M. No. P-10-2772, entitled *Domingo Peña, Jr. v. Achilles Andrew V. Regalado II* that we decided on February 16, 2010, we found Regalado guilty of conduct prejudicial to the best interest of the service for not following the proper procedure in enforcing writs of execution.

In that case, the judgment on execution ordered complainant Peña to pay a fine and damages to Flora Francisco. Peña alleged, among others, that Regalado collected from him ₱13,000.00 but Regalado issued only a handwritten acknowledgment receipt, not an official receipt. During the investigation, Regalado confessed that he did not remit to the Office of the Clerk of Court the money from Peña to spare Francisco, who was quite old, the inconvenience of filing a motion to release the money, and that Francisco was not around that day so he gave the ₱13,000.00 to her the next day. He also said that he had been a sheriff for 12 years and had followed the same procedure in some of the cases assigned to him for execution. Regalado also collected from Peña ₱4,500.00 and ₱2,000.00 but it took two years, and the intervention of the judge, before Regalado remitted the amounts to Francisco. For his wrongful actions, we suspended Regalado from the service for one (1) year without pay, with a stern warning that a repetition of the same offense shall be dealt with more severely.

This case filed by Argoso against Regalado, also involves money received by Regalado from an interested party to implement a writ of execution. Regalado should not have received money from Argoso for his transportation to Daet, without previously submitting his expenses for the court's approval. Regalado's admission that he received money without complying with the proper procedure in enforcing writs of execution, made him guilty of conduct prejudicial to the best interest of the service.

Section 52(A)(20) of the Revised Uniform Rules on Administrative Cases classifies conduct prejudicial to the best interest of the service as a grave offense, punishable by suspension of six months and one day to one year for the first offense, and

by dismissal for the second offense. This is Regalado's second administrative case for failing to follow the proper procedure in enforcing writs of execution; this metes him the penalty of dismissal from the service.

**WHEREFORE,** premises considered, Achilles Andrew V. Regalado II is found guilty, for the second time, of the grave offense of conduct prejudicial to the best interest of the service and is, accordingly, *DISMISSED* from the service, with prejudice to re-employment in any branch, agency, or instrumentality of the government, including government-owned and controlled corporations.

**SO ORDERED.**

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

*Carpio* and *Abad, JJ.,* are on wellness leave.

*Peralta, J.,* on leave.

*Perez, J.,* inhibited himself.

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**EN BANC**

[A.M. No. RTJ-07-2076. October 12, 2010]

**OFFICE OF THE COURT ADMINISTRATOR,** *complainant, vs.* **JUDGE ALBERTO L. LERMA,** *respondent.*

[A.M. No. RTJ-07-2077. October 12, 2010]

**ATTY. LOURDES A. ONA,** *complainant, vs.* **JUDGE ALBERTO L. LERMA,** *respondent.*

[A.M. No. RTJ-07-2078. October 12, 2010]

**JOSE MARI L. DUARTE,** *complainant, vs.* **JUDGE ALBERTO L. LERMA,** *respondent.*

[A.M. No. RTJ-07-2079. October 12, 2010]

**RET. GENERAL MELITON D. GOYENA,** *complainant, vs.* **JUDGE ALBERTO L. LERMA,** *respondent.*

[A.M. No. RTJ-07-2080. October 12, 2010]

**OFFICE OF THE COURT ADMINISTRATOR,** *complainant, vs.* **JUDGE ALBERTO L. LERMA,** *respondent.*

**SYLLABUS**

**(a) A.M. No. RTJ-07-2076**

**1. JUDICIAL ETHICS; JUDGES; FAILURE TO OBEY A RESOLUTION OF THE SUPREME COURT; CLASSIFICATION; PENALTY.—** Under Section 9(4), Rule 140, Revised Rules of Court, failure to obey the Court's resolution is a less serious offense that carries a penalty of suspension from office without salary and other benefits for not less than one (1) month or more than three (3) months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

**2. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PLACE WHERE ACTION IS TO BE INSTITUTED; DEPENDENT ON WHERE THE CRIME WAS COMMITTED.—**In criminal actions, it is a fundamental rule that venue is jurisdictional. The place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction. Thus, a court cannot exercise jurisdiction over a person charged with an offense committed outside the limited territory.

**3. ID.; CIVIL PROCEDURE; COURTS; JURISDICTION; DEPENDENT ON ALLEGATIONS IN COMPLAINT OR INFORMATION.—**Furthermore, the jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information.

**4. ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE COURT THAT HAD JURISDICTION WAS THE RTC, ROSALES, PANGASINAN.—** The demurrer to evidence filed by the accused cited the accusatory portion of the information which charged him with unlawful possession of a caliber .30 U.S. carbine with two magazines and twenty-five (25) rounds of ammunition. The information clearly stated that the accused possessed the carbine, magazines, and ammunitions in Barangay Cabalaongan Sur, Municipality of Rosales, Province of Pangasinan.

**5. ID.; ID.; DEMURRER TO EVIDENCE; IN THE CASE AT BAR, THE RESPONDENT JUDGE WAS NOT AUTHORIZED TO RESOLVE SAID DEMURRER.—** Had respondent judge exercised a moderate degree of caution before resolving the demurrer to evidence, a mere perusal of the records would have reminded him that his court was only authorized to arraign the accused, to receive the evidence in the said case, and to return the records of the case to the RTC, Branch 53, Rosales, Pangasinan for continuation of the proceedings.

**6. JUDICAL ETHICS; CODE OF JUDICIAL CONDUCT; JUDGES; JUDGES REQUIRED TO DILIGENTLY ASCERTAIN THE FACTS IN EVERY CASE; IN THE CASE AT BAR, RESPONDENT JUDGE WAS FOUND WANTING IN THE DILIGENCE REQUIRED OF HIM.—** In every case, a judge shall endeavor diligently to ascertain the facts. Respondent judge was found wanting in the diligence required of him. We agree with the Investigating Justice in finding respondent judge guilty of violating a Supreme Court directive, and impose upon him a fine of ₱15,000.00.

**(b) A.M. No. RTJ-07-2080**

**1. POLITICAL LAW; PUBLIC OFFICERS; JUDICIARY; WORK SCHEDULE.—** Supreme Court Memorandum Order dated November 19, 1973 provides for the observance by judges, among other officials and employees in the judiciary, of a five-day forty-hour week schedule which shall be from 8:00 AM to 12:00 PM and from 12:30 PM to 4:30 PM from Mondays to Fridays.

**2. ID.; ID.; ID.; ID.; IN THE CASE AT BAR, RESPONDENT JUDGE DID NOT FILE ANY LEAVE OF ABSENCE ON THE DATES**

**HE PLAYED GOLF AT TAT FILIPINAS.—** The Investigating Justice found as insufficient the evidence that the OCA presented to show that respondent judge played golf at the Alabang Country Club on the dates alleged, but found substantial evidence that respondent judge played golf at TAT Filipinas on the dates and time indicated in Hirofumi's letter dated September 3, 2007. The testimony of Aquino, along with the certification issued by Hermogena, that respondent judge did not file any leave of absence on the dates indicated in Hirofumi's letter, indubitably established that respondent judge violated Supreme Court Memorandum Order dated November 19, 1973, Administrative Circular No. 3-99 dated January 15, 1999, and Administrative Circular No. 5 dated October 4, 1988.

**3. REMEDIAL LAW; CHARGES AGAINST JUDGES; FAILURE TO OBEY A RESOLUTION OF THE SUPREME COURT; CLASSIFICATION; PENALTY.—** Violation of Supreme Court rules, directives, and circulars, and making untruthful statements in the certificate of service are considered less serious charges under Section 9, Rule 140 of the Rules of Court. Under Section 11(B) of Rule 140, these acts may be punished by suspension from office without salary and other benefits for not less than one (1) month or more than three (3) months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

**4. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, RESPONDENT JUDGE WAS FINED ₱15,000.00.**— On the basis of the foregoing findings, we adopt the recommendation of the Investigating Justice that, in this administrative case, a fine of ₱15,000.00 be imposed upon respondent judge.

**(c) A.M. No. RTJ-07-2077**

**1. REMEDIAL LAW; CHARGES AGAINST JUDGES; GROSS IGNORANCE OF THE LAW; GROSS NEGLIGENCE; DEFINED.—** We have repeatedly held that to warrant a finding of gross ignorance of the law, it must be shown that the error is "so gross and patent as to produce an inference of bad faith." Gross negligence refers to negligence characterized by 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 insofar as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never

fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.

**2. JUDICIAL ETHICS; CODE OF JUDICIAL CONDUCT; JUDGES; REQUIREMENT OF CREDIBILITY, PROBITY, AND INTEGRITY; IN THE CASE AT BAR, THE BREACH COMMITTED BY RESPONDENT CAN BE CHARACTERIZED AS FLAGRANT AND PALPABLE.—** In the instant case, the issuance by respondent of divergent orders raises serious questions of impropriety that taint respondent judge's credibility, probity, and integrity. Coupled with the clandestine issuance of the second order — where the Union Bank counsel and even the judge's own staff were left completely in the dark — the action of respondent judge gives rise to an inference of bad faith. Indeed, we have ample reason to believe — as Atty. Ona posits — that the secretly-issued second order was really intended to give Atty. Perez the ammunition to oppose Union Bank's *Urgent Manifestation and Motion to Recall Writ of Execution/Garnishment* which was to be heard by the RTC of Makati City. Under the circumstances, the breach committed by respondent can be characterized as flagrant and palpable.

**3. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER LOWER COURTS; ADMINISTRATIVE COMPLAINT; FINDINGS OF FACT; CASE AT BAR.—** Notwithstanding the recommendation of the Investigating Justice, the Court finds that the actions of respondent judge constitute gross negligence and/or gross ignorance of the law.

**4. REMEDIAL LAW; CHARGES AGAINST JUDGES; GROSS IGNORANCE OF THE LAW; GROSS NEGLIGENCE; IMPOSABLE PENALTIES.—** This action of respondent judge violates Section 8 of Rule 140, and carries the penalty of dismissal from the service or suspension from office for more than three (3) months but not exceeding six (6) months, or a fine of ₱20,000.00 but not exceeding ₱40,000.00.

**5. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, RESPONDENT JUDGE IS DISMISSED FROM THE SERVICE.—** For this violation, we impose upon respondent judge the penalty of dismissal from the service, with forfeiture of all benefits, except

earned leave credits, and perpetual disqualification from reemployment in the government service, including government-owned and controlled corporations.

**(d) A.M. No. RTJ-07-2078**

**1. REMEDIAL LAW; CHARGES AGAINST JUDGES; GROSS IGNORANCE OF THE LAW; DEFINED.—** It is true that to constitute gross ignorance of the law, it is not enough that the subject decision, order, or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence but, most importantly, he must be moved by bad faith, fraud, dishonesty, or corruption. However, when the law is so elementary — and the matter of jurisdiction is an elementary principle that judges should be knowledgeable of — not to be aware of it constitutes gross ignorance of the law.

**2. JUDICIAL ETHICS; CODE OF JUDICIAL CONDUCT; JUDGES; THEY ARE EXPECTED TO KEEP ABREAST OF OUR LAWS AND THE CHANGES THEREIN AS WELL AS WITH THE LATEST DECISIONS OF THE SUPREME COURT.—** Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural rules. They are expected to keep abreast of our laws and the changes therein as well as with the latest decisions of the Supreme Court. They owe it to the public to be legally knowledgeable, for ignorance of the law is the mainspring of injustice. Judicial competence requires no less. It is a truism that the life chosen by a judge as a dispenser of justice is demanding. By virtue of the delicate position which he occupies in society, he is duty bound to be the embodiment of competence and integrity.

**3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; INDIRECT CONTEMPT; RULE.—**Section 4, Rule 71 of the same Rules provides: "Sec. 4. *How proceedings commenced*.— Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt. In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing

initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but **said petition shall be docketed, heard and decided separately,** unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision."

**4. ID.; ID.; ID.; ID.; THE PROCEDURAL REQUIREMENTS ARE MANDATORY.—** The Rules are unequivocal. Indirect contempt proceedings may be initiated only in two ways: (1) *motu proprio* by the court; or (2) through a verified petition and upon compliance with the requirements for initiatory pleadings. The procedural requirements are mandatory considering that contempt proceedings against a person are treated as criminal in nature. Conviction cannot be had merely on the basis of written pleadings.

**5. ID.; ID.; ID., ID.; POWER TO PUNISH FOR CONTEMPT SHOULD BE USED SPARINGLY.—** It must be remembered that the power to punish for contempt should be used sparingly with caution, restraint, judiciousness, deliberation, and due regard to the provisions of the law and the constitutional rights of the individual. In this respect, respondent judge failed to measure up to the standards demanded of a member of the judiciary.

**6. ID.; ID.; ID.; ID.; THE PROCEDURAL REQUIREMENTS ARE MANDATORY; IN THE CASE AT BAR, THE ACTION OF RESPONDENT JUDGE WAS SADLY WANTING.—** On the matter of the order finding complainant guilty of indirect contempt, we also find the action of respondent judge sadly wanting. x x x The records do not indicate that complainant was afforded an opportunity to rebut the charges against him. Respondent judge should have conducted a hearing in order to provide complainant the opportunity to adduce before the court documentary or testimonial evidence in his behalf. The hearing also allows the court a more thorough evaluation of the circumstances surrounding the case, including the chance to observe the accused present his side in open court and subject his defense to interrogation from the complainants or from the court itself.

**7. ID.; CHARGES AGAINST JUDGES; GROSS IGNORANCE OF THE LAW; CLASSIFICATION; IMPOSABLE PENALTIES.—** As already mentioned above, gross ignorance of the law or procedure is classified as a serious charge under Section 8(9), Rule 140, Revised Rules of Court, and a respondent found guilty of serious charge may be punished by: (a) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (b) suspension from office without salary and other benefits for more than three (3) months but not exceeding six (6) months; or (c) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

**8. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.—** In this case, we find respondent judge guilty of gross ignorance of the law, and impose upon him a fine of ₱40,000.00.

**(e) A.M. No. RTJ-07-2079**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; WHEN WARRANT MAY ISSUE; PROBABLE CAUSE; DETERMINATION; IN THE CASE AT BAR, RESPONDENT JUDGE WAS DELAYED IN DETERMINING PROBABLE CAUSE.—** This Court finds that respondent judge's delay in the determination of probable cause clearly runs counter to the provisions of Section 6, Rule 112 of the Revised Rules of Criminal Procedure, which provides: "Sec. 6. *When warrant of arrest may issue*.– (a) *By the Regional Trial Court*.– Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rules. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must

be resolved by the court within thirty (30) days from the filing of the complaint or information. x x x"

**2. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, RESPONDENT JUDGE SHOULD HAVE DETERMINED THE EXISTENCE OF PROBABLE CAUSE WITHIN TEN (10) DAYS FROM JULY 17, 2006, THE DATE HE HEARD THE RESPECTIVE ARGUMENTS OF THE PARTIES.—**While respondent judge could not have ascertained the existence of probable cause for the issuance of an arrest warrant against Cuason within ten (10) days from the filing of the complaint or information – Criminal Case No. 06-179 having been re-raffled to his sala only on May 2, 2006 – prudence demanded that respondent judge should have determined the existence of probable cause within ten (10) days from July 17, 2006, the date he heard the respective arguments of the parties. This interpretation is in keeping with the provisions of Section 6, Rule 112.

**3. ID.; ID.; ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, JUDGE LERMA SHOULD ALSO HAVE EXERCISED CAUTION IN DETERMINING THE EXISTENCE OF PROBABLE CAUSE.—**Judge Lerma should also have exercised caution in determining the existence of probable cause. At the very least, he should have asked the prosecutor to present additional evidence, in accordance with Section 6, Rule 112 of the Revised Rules of Criminal Procedure or, in the alternative, to show cause why the case should not be dismissed instead of precipitately ordering the dismissal of the case. The circumstances required the exercise of caution considering that the case involved estafa in the considerable amount of ₱20 Million for which the complainant paid ₱129,970.00 in docket fees before the Office of the City Prosecutor and later ₱167,114.60 as docket fee for the filing of the Information before the RTC.

**4. ID.; CHARGES AGAINST JUDGES; UNDUE DELAY IN RENDERING AN ORDER; CLASSIFICATION; PENALTY; CASE AT BAR.—**By allowing forty-eight (48) days to lapse before issuing the two-page omnibus order dated September 4, 2006, respondent judge should be held liable for undue delay in rendering an order, which is classified as a less serious charge under Section 9(1), Rule 140 of the Rules of Court, punishable by suspension from office without salary and other

benefits for not less than one (1) month or more than three (3) months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

**5. ID.; EVIDENCE; RELEVANT EVIDENCE; IN THE CASE AT BAR, WITH RESPECT TO EXISTENCE OR NON-EXISTENCE OF THE CONDOMINIUM UNITS, BEST EVIDENCE WOULD HAVE BEEN ADDUCED BY AN OCULAR INSPECTION OF THE UNITS THEMSELVES.—** Section 4, Rule 128 of the Rules of Court provides that "evidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence." "Relevancy is, therefore, determinable by the rules of logic and human experience … Relevant evidence is any class of evidence which has 'rational probative value' to the issue in controversy." Logic and human experience teach us that the documents relied upon by respondent do not constitute the best evidence to prove the existence or non-existence of the condominium units. To repeat, the best evidence would have been adduced by an ocular inspection of the units themselves.

**6. ID.; ID.; ID.; ID.; IT NOW APPEARS THAT THE PIECES OF EVIDENCE RELIED UPON BY THE RESPONDENT DO NOT FULLY SUPPORT HIS ORDER DISMISSING THE CASE.—** The information in Criminal Case No. 06-179 clearly accuses Cuason of falsely pretending that he can return the investment of complainant by paying cash and two (2) condominium units when in fact these units do not exist or have not yet been constructed. The issue therefore boils down to whether or not the condominium units exist, and the incontrovertible proof of this are the condominium units themselves. The logical thing to do would have been to order the conduct of an ocular inspection. Instead of an ocular inspection, respondent relied on the certificate of registration, the development permit, the license to sell, the building permit, and the Condominium Certificate of Title — on the basis of which the judge ordered the dismissal of the case. It may be that an ocular inspection was premature at the time the respondent dismissed the case because at that time the case was not yet set for the presentation of evidence of the parties. Nevertheless, it now appears that the pieces of evidence relied upon by the respondent do not fully support his conclusion.

**7. ID.; CHARGES AGAINST JUDGES; UNDUE DELAY IN RENDERING AN ORDER; CLASSIFICATION; PENALTY; IN THE CASE AT BAR, RESPONDENT JUDGE IS FINED ₱21,000.—** For this particular violation, we find respondent judge guilty and impose upon him a fine of ₱21,000.00.

**(f) A.M. NO. RTJ-07-2080**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER LOWER COURTS; PERIOD TO DECIDE CASES; JUDICIAL AUDIT FROM AUGUST 21-30, 2007 OF THE RTC, BRANCH 256, MUNTINLUPA; CASE AT BAR.—** As an unflattering footnote to these administrative offenses, the OCA, upon the authority of the Chief Justice, conducted a judicial audit from August 21-30, 2007 of the RTC, Branch 256, Muntinlupa. The initial result of the audit revealed that Judge Lerma failed to decide 30 civil cases and 11 criminal cases within the 90-day reglementary period. It also appears that 101 civil cases and 137 criminal cases remained unacted despite the lapse of a considerable period.

**2. ID.; ID.; ID.; ID.; ID.; JUDGES; A.M. NO. RTJ-03-1799, SEPTEMBER 13, 2003; JUDGE LERMA FOUND LIABLE FOR CONDUCT UNBECOMING A JUDGE (HAVING LUNCH WITH A LAWYER WHO HAS A PENDING CASE IN HIS SALA) AND WAS REPRIMANDED.—** Judge Lerma had previously been sanctioned by this Court. In a resolution dated September 13, 2003 in A.M. No. RTJ-03-1799, entitled *Ma. Cristina Olondriz Pertierra v. Judge Alberto L. Lerma*, this Court found him liable for conduct unbecoming a judge and imposed upon him the penalty of reprimand. In that case, Judge Lerma was found having lunch with a lawyer who has a pending case in his sala.

**3. JUDICIAL ETHICS; CODE OF JUDICIAL CONDUCT; JUDGES; DUTY TO AVOID ANY IMPRESSION OF IMPROPRIETY TO PROTECT THE IMAGE AND INTEGRITY OF THE JUDICIARY; CASE AT BAR.—** The totality of all these findings underscore the fact that respondent judge's actions served to erode the people's faith and confidence in the judiciary. He has been remiss in the fulfillment of the duty imposed on all members of the bench in order to avoid any impression of impropriety to protect the image and integrity of the judiciary.

**4. ID.; ID.; ID.; DUTY TO SEE TO IT THAT JUSTICE IS DISPENSED EVENLY AND FAIRLY; CASE AT BAR.—** To reiterate, officers of the court have the duty to see to it that justice is dispensed evenly and fairly. Not only must they be honest and impartial, but they must also appear to be honest and impartial in the dispensation of justice. Judges should make sure that their acts are circumspect and do not arouse suspicion in the minds of the public.

**5. ID.; ID.; ID.; ID.; CASE AT BAR.—** When they fail to do so, such acts cast doubt upon their integrity and ultimately on the judiciary in general. "Courts will only succeed in their task and mission if the judges presiding over them are truly honorable men, competent and independent, honest and dedicated." Respondent judge failed to live up to the judiciary's exacting standards, and this Court will not withhold penalty when called for to uphold the people's faith in the Judiciary.

**APPEARANCES OF COUNSEL**

*DJ Mendoza Law Office* for Ret. Gen. Meliton E. Goyena & Jose L. Duarte.

*Marcial O.T. Balgos and Balgos & Perez* for Judge Alberto L. Lerma.

**D E C I S I O N**

***PER CURIAM:***

Five (5) administrative cases were filed with the Office of the Court Administrator (OCA) against Judge Alberto L. Lerma (respondent judge) of the Regional Trial Court (RTC), Branch 256, Muntinlupa City, for violating Supreme Court rules, directives, and circulars, for making untruthful statements in his certificates of service, for gross ignorance of the law and/or gross negligence, for delay in rendering an order, for abusing judicial authority and discretion, and for serious irregularity.

In a memorandum[1] dated September 24, 2007, embodying the report and recommendation of the OCA, then Court

[1] *Rollo* (RTJ-07-2076), pp. 9-22.

Administrator Christopher O. Lock (Court Administrator Lock) referred to then Chief Justice Reynato S. Puno (Chief Justice Puno) the five administrative cases filed against respondent judge, to wit: a) Administrative Matter No. 98-6-179-RTC (*Re: Request for transfer of arraignment/trial of Criminal Case No. 3639-R); b) OCA IPI No. 07-2644-RTJ ([Ret.] General Meliton D. Goyena v. Judge Alberto L. Lerma); c) OCA IPI No. 07-2643-RTJ (Jose Mari L. Duarte v. Judge Alberto L. Lerma); d) OCA IPI No. 07-2639-RTJ (Atty. Lourdes A. Ona v. Judge Alberto L. Lerma); and e) OCA IPI No. 07-2654-RTJ (Office of the Court Administrator v. Judge Alberto L. Lerma).*

Per resolution[2] of the Supreme Court *En Banc* dated September 25, 2007, the foregoing cases were respectively redocketed as regular administrative cases, as follows: A.M. Nos. RTJ-07-2076, RTJ-07-2079, RTJ-07-2078, RTJ-07-2077, and RTJ-07-2080.

Thereafter, the cases were referred to an Investigating Justice[3] of the Court of Appeals (CA) for investigation and recommendation.

We shall discuss the cases individually, taking into account their peculiar factual surroundings and the findings and recommendations of the Investigating Justice.

**a.) A.M. No. RTJ-07-2076**

On November 27, 1995, Ruperto Pizarro *y* Bruno (accused) was charged with Violation of Presidential Decree No. 1866 in an information filed with the RTC, Branch 53, Rosales, Pangasinan and docketed as Criminal Case No. 3639-R.[4] Since accused was already detained at the Quezon City Jail due to the pendency of another criminal case (Criminal Case No. Q-95-64130-31) filed against him. The court ordered that all notices of hearings and proceedings in Criminal Case No. 3639-R be forwarded to the Jail Warden of the Quezon

[2] *Id.* at 38-39.

[3] Justice Hakim S. Abdulwahid of the CA.

[4] *Rollo* (RTJ-07-2076), p. 41.

City Jail.[5] Subsequently, in a letter dated March 25, 1998,[6] Officer-in-Charge/City Warden Arnold Buenacosa of the Quezon City Jail informed Judge Teodorico Alfonzo B. Bauzon (Judge Bauzon), RTC of Rosales, Pangasinan, that accused was transferred to the Bureau of Corrections in Muntinlupa City on March 21, 1998 in compliance with the commitment order and decision in Criminal Case No. Q-95-64130-31 of the RTC, Branch 82, Quezon City.

The Supreme Court, in a resolution[7] dated June 30, 1998, directed (1) the Clerk of Court of the RTC, Branch 53, Rosales, Pangasinan, to forward the records of Criminal Case No. 3639-R to the Executive Judge, RTC, Muntinlupa City, for appropriate action; (2) the Executive Judge, RTC, Muntinlupa City, to raffle the case among the judges to arraign the accused and consequently take his testimony; and (3) the Clerk of Court, RTC, Muntinlupa City, to return the records to the RTC, Branch 53, Rosales, Pangasinan, for the continuation of the proceedings.

Pursuant to the Supreme Court resolution, Criminal Case No. 3639-R[8] was raffled to RTC, Branch 256, Muntinlupa City, presided by respondent judge. Accused was arraigned on September 29, 1998. Thereafter, respondent judge proceeded to receive the evidence for the prosecution. On February 7, 2003, the prosecution formally offered its exhibits, but the firearm subject of the information was not included in the formal offer. On June 27, 2005, the accused, through Atty. Abelardo D. Tomas of the Public Attorney's Office (PAO), filed a *motion for leave of court to file demurrer to prosecution's evidence*.[9] Respondent judge granted the said motion on July 26, 2005.[10] On November 8, 2005, Atty. Rodney Magbanua of the PAO

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[5] *Id.* at 53.

[6] *Id.* at 99.

[7] *Id.* at 8.

[8] Docketed as Criminal Case No. 98-464 in the RTC of Muntinlupa.

[9] *Rollo* (RTJ-07-2076), p. 339.

[10] *Id.* at 346.

filed a *demurrer to prosecution's evidence*,[11] contending that, without the subject firearm, the prosecution failed to prove an essential element of the offense. On February 28, 2007, respondent judge issued an order, granting the demurrer to prosecution's evidence and dismissing the case for insufficiency of evidence.[12]

In a memorandum[13] dated September 24, 2007, the OCA charged respondent judge with exceeding his authority under the Supreme Court resolution dated June 30, 1998 in A.M. No. 98-6-179-RTC. According to the OCA, the authority given to respondent judge under the resolution was clearly limited to the arraignment of the accused and the taking of his testimony; it did not authorize respondent judge to decide the merits of the case. The OCA contended that the act of respondent judge constituted violation of a Supreme Court directive, a less serious offense, under Section 9(4), Rule 140, Revised Rules of Court.

In his comment dated November 16, 2007, respondent judge asserted that there was neither a conscious nor a deliberate intent on his part to disobey any directive of the Supreme Court when he granted the demurrer to evidence filed by the accused in Criminal Case No. 3639-R. He claimed that, through inadvertence, he was not able to recall the limits of the referral made to him, and stressed that he ruled on the merits of the case in a way not tainted with fraud, dishonesty, or corruption. He emphasized that he acted on the demurrer to evidence because of the inadequacy of the evidence for the prosecution and because of the failure of the latter to object to the demurrer. He maintained that it would have been wrong for him to add to the penalty already being served by the accused when there was no evidence to warrant the detention of the latter for the unproved offense.[14]

Under Section 9(4), Rule 140, Revised Rules of Court, failure to obey the Court's resolution is a less serious offense that

[11] *Id.* at 357-359.

[12] *Id.* at 386-387.

[13] *Supra* note 1.

[14] *Rollo* (RTJ-07-2076), pp. 393-396.

carries a penalty of suspension from office without salary and other benefits for not less than one (1) month or more than three (3) months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

The Investigating Justice recommends that a fine of ₱15,000.00 be imposed upon respondent, based on the following findings:

In criminal actions, it is a fundamental rule that venue is jurisdictional. The place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction. Thus, a court cannot exercise jurisdiction over a person charged with an offense committed outside the limited territory. Furthermore, the jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information.[15]

The demurrer to evidence filed by the accused cited the accusatory portion of the information which charged him with unlawful possession of a caliber .30 U.S. carbine with two magazines and twenty-five (25) rounds of ammunition. The information clearly stated that the accused possessed the carbine, magazines, and ammunitions in Barangay Cabalaongan Sur, Municipality of Rosales, Province of Pangasinan. Had respondent judge exercised a moderate degree of caution before resolving the demurrer to evidence, a mere perusal of the records would have reminded him that his court was only authorized to arraign the accused, to receive the evidence in the said case, and to return the records of the case to the RTC, Branch 53, Rosales, Pangasinan for continuation of the proceedings. In every case, a judge shall endeavor diligently to ascertain the facts.[16]

Respondent judge was found wanting in the diligence required of him. We agree with the Investigating Justice in finding respondent judge guilty of violating a Supreme Court directive, and impose upon him a fine of ₱15,000.00.

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[15] *Macasaet v. People*, G.R. No. 156747, February 23, 2005, 452 SCRA 255, 271.

[16] *Santos v. How*, A.M. No. RTJ-05-1946, January 26, 2007, 513 SCRA 25.

**b.) A.M. No. RTJ-07-2080**

In a letter[17] dated August 28, 2007, Godofredo R. Galindez, Jr., (Godofredo), president of the Alabang Country Club, Inc. (Alabang Country Club), in response to the letter dated August 21, 2007 of Court Administrator Lock, stated that respondent judge played golf at the Alabang Country Club on the following dates and tee-off time:

| Date | Tee off - Time |
|---|---|
| April 8, 2000 | 12:00 P.M. |
| July 21, 2000 | 1:08 P.M. |
| August 4, 2000 | 1:20 P.M. |
| November 28, 2000 | 10:00 P.M. |
| May 17, 2001 | 3:05 P.M. |
| September 29, 2001 | 12:56 P.M. |
| March 5, 2002 | 1:00 P.M. |
| June 19, 2002 | 7:12 P.M. |
| February 12, 2004 | 1:35 P.M. |
| February 28, 2005 | 10:41A.M. |

With the exception of May 17, 2001, during which respondent judge allegedly played nine (9) holes of golf, Godofredo stated in his letter that the former played eighteen (18) holes of golf on all the aforestated dates.

In another letter[18] dated September 3, 2007, Hirofumi Hotta (Hirofumi), operations manager of TAT Filipinas Golf Club (Tat Filipinas), in answer to an inquiry made by Court Administrator Lock, stated that respondent judge visited the said golf club and appeared to have played golf there on the following dates — all Thursdays — and time:

| *Date* | *Time* |
|---|---|
| April 14, 2005 | 1:30 P.M. |
| April 28, 2005 | 1:30 P.M. |
| August 18, 2005 | 1:30 P.M. |
| August 25, 2005 | 1:30 P.M. |
| November 17, 2005 | 1:30 P.M. |

[17] *Rollo* (RTJ-07-2080), p. 31.

[18] *Id.* at 33.

| | |
|---|---|
| November 24, 2005 | 1:30 P.M. |
| December 15, 2005 | 1:30 P.M. |
| January 26, 2006 | 1:30 P.M. |
| February 9, 2006 | 1:30 P.M. |
| March 2, 2006 | 1:30 P.M. |
| March 23, 2006 | 1:30 P.M. |
| April 6, 2006 | 1:30 P.M. |
| April 27, 2006 | 1:30 P.M. |
| June 15, 2006 | 1:30 P.M. |
| December 14, 2006 | 1:30 P.M. |

According to the OCA, its records in the Office of the Administrative Services show that respondent judge did not declare his absences on July 21, 2000, August 4, 2000, March 5, 2002, February 12, 2004, and February 28, 2005, during which he reportedly played golf at the Alabang Country Club. Further, in a certification[19] dated September 5, 2007, Hermogena F. Bayani (Hermogena), Supreme Court Chief Judicial Staff Officer, Leave Division, OCA, stated that respondent judge did not file any application for a leave of absence on all the dates mentioned by Hirofumi in his letter dated September 3, 2007. These constituted violations of Supreme Court Memorandum Order dated November 19, 1973, Administrative Circular No. 3-99 dated January 15, 1999, and Administrative Circular No. 5 dated October 4, 1988.[20]

The OCA asserted that on the days that respondent judge played golf, he was lost to the judiciary for half the working/session hours on those days, positing that this is not merely truancy but also dishonesty and falsification of certificates of service.

Respondent judge, in his comment, countered that contrary to the allegations of the OCA, he only played golf thrice in 2000, once in 2001, twice in 2002, six (6) times in 2005, and five (5) times in 2006 – a total of eighteen (18) times in six years, or at the average of three (3) times a year. He argued

[19] *Id.* at 35.

[20] *Id.* at 60.

that his playing golf 18 times in six years, or thrice a year, could not be reasonably characterized as habitual to the extent that it jeopardized the discharge of his functions as a judge. He alleged that since he shared his courtroom with the other judges in Muntinlupa, he only played golf on days when no other place was available for him to carry out his official functions. Likewise, he explained that, in 1996, his physician advised him to exercise more vigorously after he was diagnosed with diabetes and hypertension. Respondent judge also stressed that he had never missed a day in hearing cases pending in his sala.[21]

In the hearing conducted by the Investigating Justice on December 4, 2007, the OCA presented Godofredo, Hirofumi, and Sheila Aquino as witnesses.

Godofredo testified that the dates and time when respondent judge played golf at the Alabang Country Club, as mentioned in his letter, are based on the logbook entries made by the starter in the country club. A starter, explained Godofredo, is a person who records in the logbook the names of the individuals who play in the golf course. The starter may be the player himself or a member who brings in guests to play golf.

On cross-examination, Godofredo admitted that he is not the custodian of the logbook; that he is neither the starter nor the person who wrote the entries in the logbook; and that he does not recognize in whose handwriting the entries were made.

Hirofumi, the operations manager of TAT Filipinas, testified that Aquino, the front desk receptionist in the golf club, made the listing of the respective dates and time when respondent judge played at TAT Filipinas based on the data stored in their office computer.

Aquino, who had been employed by the company for fifteen (15) years, and had been working as its front desk receptionist for six (6) years, testified that she saw respondent judge sign the registered member forms at the golf club prior to playing golf.

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[21] *Id.* at 66-68.

The Investigating Justice found as insufficient the evidence that the OCA presented to show that respondent judge played golf at the Alabang Country Club on the dates alleged, but found substantial evidence that respondent judge played golf at TAT Filipinas on the dates and time indicated in Hirofumi's letter dated September 3, 2007.

The testimony of Aquino, along with the certification issued by Hermogena, that respondent judge did not file any leave of absence on the dates indicated in Hirofumi's letter, indubitably established that respondent judge violated Supreme Court Memorandum Order dated November 19, 1973, Administrative Circular No. 3-99 dated January 15, 1999, and Administrative Circular No. 5 dated October 4, 1988.

Supreme Court Memorandum Order dated November 19, 1973 provides for the observance by judges, among other officials and employees in the judiciary, of a five-day forty-hour week schedule which shall be from 8:00 a.m. to 12:00 p.m. and from 12:30 p.m. to 4:30 p.m. from Mondays to Fridays.

Violation of Supreme Court rules, directives, and circulars, and making untruthful statements in the certificate of service are considered less serious charges under Section 9, Rule 140 of the Rules of Court. Under Section 11(B) of Rule 140, these acts may be punished by suspension from office without salary and other benefits for not less than one (1) month or more than three (3) months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

On the basis of the foregoing findings, we adopt the recommendation of the Investigating Justice that, in this administrative case, a fine of ₱15,000.00 be imposed upon respondent judge.

**c.) A.M. No. RTJ-07-2077**

On January 24, 1995, the RTC, Branch 142, Makati City, rendered a decision in Civil Case No. 90-659, entitled *Alexander Van Twest v. Gloria A. Anacleto and/or International Corporate Bank,* ordering defendant bank (Interbank) or its successors-in-interest to release in favor of plaintiff Alexander Van Twest

(Van Twest) the entire proceeds of Interbank Foreign Currency Trust Deposit (FCTD) No. 39156 in the amount of Deutsch Mark (DM) 260,000.00, including accrued interest and other earnings. The decision also directed defendant Gloria Anacleto to return to plaintiff the sum of DM 9,777.37 with interest thereon. The court ordered the defendants, jointly and severally, to pay plaintiff ₱500,000.00 as moral damages, ₱250,000.00 as exemplary damages, ₱200,000.00 as attorney's fees, and the costs of suit.[22] However, even before the decision was rendered, Van Twest had disappeared and was believed to have been kidnapped and killed.[23]

Subsequently, Atty. Ernesto V. Perez (Atty. Perez), representing Van Twest, filed a *Motion for Execution of Decision.* In the motion, Atty. Perez informed the RTC of Makati City that, on October 30, 2006, the RTC, Branch 256, Muntinlupa City, with respondent judge presiding, granted the petition to appoint the former as administrator of the properties or estate of absentee Van Twest in Special Proceeding No. 97-045, entitled *In the Matter of the Petition to Appoint an Administrator for the Estate of Absentee Alexander Van Twest a.k.a. Eugene Alexander Van West.*[24] On January 27, 2007, the RTC Branch 142, Makati City, granted the motion for execution.[25]

Union Bank of the Philippines (Union Bank) filed a *Manifestation and Urgent Ex-Parte Motion* dated May 23, 2007 in Special Proceeding No. 97-045, praying that the exercise by Atty. Perez of powers as administrator of absentee Van Twest be held in abeyance until the said manifestation and motion is heard. Because respondent judge was on official leave at the time of the filing of the *Manifestation and Urgent Ex-Parte Motion,* Judge Philip A. Aguinaldo, pairing judge of RTC Branch 256, Muntinlupa City, acted on the same, and, in an order dated May 28, 2007, granted Union Bank's urgent *ex-parte* motion.

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[22] Folder of Exhibits, pp. 20-21.

[23] *Rollo* (RTJ-07-2077), p. 83.

[24] Folder of Exhibits, p. 83.

[25] See Folder of Exhibits, p. 43.

Union Bank thereafter filed an *Urgent Manifestation and Motion to Recall Writ of Execution/Garnishment* in Civil Case No. 90-659, citing, in support thereof, the order dated May 28, 2007 issued by Judge Aguinaldo in Special Proceeding No. 97-045.

On June 1, 2007, Atty. Perez filed with the Muntinlupa RTC an *Omnibus Motion*: *1) To Lift or Set Aside Pairing Judge's Order of May 28, 2007 for having been issued without jurisdiction, grave abuse of discretion and/or violation of due process of law; 2) To Cite Union Bank of the Philippines' counsel for Indirect Contempt.*

At the hearing of the omnibus motion on June 6, 2007, respondent judge ordered Atty. Lourdes A. Ona (Atty. Ona), counsel for Union Bank, to file her Opposition and/or Comment to the said Motion within 10 days. Atty. Perez was given the same period from receipt of the Opposition and/or Comment to file his Reply thereto, if necessary, and thereafter, the matter would be deemed submitted for resolution.

On the same day, however, respondent judge issued another order bearing the same date, ruling that the bank had not shown any legal basis to set aside the court's decision of October 30, 2006, or to suspend the Letters of Administration issued to Atty. Perez pursuant thereto. The order then concluded that Atty. Perez may exercise all the powers granted to him as Administrator of the absentee Van Twest until further orders of the court.

In a letter dated July 23, 2007, addressed to the OCA, complainant alleged that respondent judge's issuance of the second order dated June 6, 2007 was irregular, in light of the following: 1) At the hearing held on June 6, 2007, the omnibus motion filed by Atty. Perez was deemed submitted for resolution only after the complainant shall have filed her comment/opposition thereto or until the 10-day period shall have expired; 2) The issuance of the second order dated June 6, 2007 was secretly railroaded to give Atty. Perez a ground to oppose Union Bank's *Urgent Manifestation and Motion to Recall Writ of Execution/ Garnishment* filed with the RTC, Branch 142, Makati City, in

time for its hearing originally set on June 8, 2007; 3) Even the staff of respondent judge did not become aware of the second June 6, 2007 order until much later, since respondent judge never furnished complainant with a copy thereof until the latter made inquiries regarding the same; and 4) The contents of the second order dated June 6, 2007 contradicted the first order and rendered the pending incident moot and academic.

Respondent judge, in his comment, denied the charge and argued that the same should be dismissed. The complainant, according to respondent judge, should instead be meted disciplinary penalties as a member of the bar.

Notwithstanding the recommendation of the Investigating Justice, the Court finds that the actions of respondent judge constitute gross negligence and/or gross ignorance of the law.

We have repeatedly held that to warrant a finding of gross ignorance of the law, it must be shown that the error is "so gross and patent as to produce an inference of bad faith."[26] Gross negligence refers to negligence characterized by 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 insofar as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[27]

In the instant case, the issuance by respondent of divergent orders raises serious questions of impropriety that taint respondent judge's credibility, probity, and integrity. Coupled with the clandestine issuance of the second order — where the Union Bank counsel and even the judge's own staff were left completely in the dark — the action of respondent judge gives rise to an inference of bad faith. Indeed, we have ample reason to believe — as Atty. Ona posits — that the secretly-issued second order

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[26] *Joaquin v. Madrid*, A.M. No. RTJ-04-1856, September 30, 2004, 439 SCRA 567, 578.

[27] *Brucal v. Hon. Desierto*, 501 Phil. 453, 465-466 (2005).

was really intended to give Atty. Perez the ammunition to oppose Union Bank's *Urgent Manifestation and Motion to Recall Writ of Execution/Garnishment* which was to be heard by the RTC of Makati City. Under the circumstances, the breach committed by respondent can be characterized as flagrant and palpable.

This action of respondent judge violates Section 8 of Rule 140, and carries the penalty of dismissal from the service or suspension from office for more than three (3) months but not exceeding six (6) months, or a fine of ₱20,000.00 but not exceeding ₱40,000.00.

For this violation, we impose upon respondent judge the penalty of dismissal from the service, with forfeiture of all benefits, except earned leave credits, and perpetual disqualification from reemployment in the government service, including government-owned and controlled corporations.

**d) A.M. No. RTJ-07-2078**

Jose Mari L. Duarte (complainant) is one of the defendants in Civil Case No. 2003-433, entitled "*Eugene T. Mateo v. The Board of Governors of Ayala Alabang Village Association: Paolo V. Castano, Constantino A. Marcaida, Ruben P. Baes, Eric Yutuc, Roberto Santiago, Beatriz "Bettina" H. Pou, Edilberto Uichanco, Salvador S. Arceo, Jr., Benjamin Narciso, Guy L. Romualdez, and Jose Mari L. Duarte*," for Declaration of the General Membership Meeting and Election of the Ayala Alabang Village Association (AAVA) as void *ab initio*, with prayer for the Issuance of a Preliminary Injunction and/or a Temporary Restraining Order (TRO) and Status Quo Order. Eugene T. Mateo filed the case on July 29, 2003 with the RTC, Muntinlupa City, and it was eventually raffled to the RTC, Branch 256, Muntinlupa City, presided over by respondent judge.[28]

On August 15, 2003, defendants Salvador S. Arceo, Jr. (Arceo) and Benjamin Narciso (Narciso) filed their *answer with affirmative defenses and counterclaims*, while all the other defendants filed a *motion to dismiss*. In moving for the dismissal

[28] *Rollo* (RTJ-07-2078), pp. 1-2.

of the case, all defendants invoked the trial court's lack of jurisdiction over the case and plaintiff's lack of cause of action. On September 2, 2003, plaintiff filed his *opposition to motion to dismiss with motion to declare defendants in default*. In an order dated September 12, 2003, respondent judge denied defendants' motion to dismiss and plaintiff's motion to declare defendants in default, and set for hearing plaintiff's application for the issuance of a TRO. Respondent judge eventually denied the prayer of plaintiff for the issuance of a TRO on September 26, 2003.

On November 25, 2003, respondent judge rendered a decision in favor of plaintiff, declaring the AAVA's general membership meeting held on June 15, 2003 void *ab initio*, and ordering that the *status quo* of the board's composition prior to the proceedings of June 15, 2003 be maintained. The respondent judge also enjoined defendants Arceo, Narciso, Guy L. Romualdez (Romualdez) and Jose Mari L. Duarte from further exercising the functions of the office they respectively hold. He directed the holding of another election of the AAVA board, and ordered the defendants to pay jointly and severally the amount of ₱100,000.00 as and by way of attorney's fees. The respondent judge dismissed the defendants' counterclaim.

The aggrieved complainant, together with all the other defendants, appealed to the CA from the above-cited decision. On December 10, 2003, plaintiff filed with the RTC a *petition to direct defendants to show cause why they should not be cited and thereafter punished for indirect contempt of court* (petition for indirect contempt) for their alleged defiance of respondent judge's decision dated November 25, 2003, as shown by their continued performance of duties as governors of Ayala Alabang Village, despite receipt of a copy of the said decision.

On July 1, 2004, respondent judge issued an order declaring complainant, Arceo and Romualdez, guilty of indirect contempt, and ordering each of them to pay a fine in the amount of ₱30,000.00.

Unperturbed, complainant and his co-defendants Arceo and Romualdez moved for reconsideration of the July 1, 2004 order.

On September 24, 2004, respondent judge granted their motion for reconsideration, and reversed and set aside his order dated July 1, 2004.

On June 29, 2007, the Special Sixteenth Division of the CA issued a resolution, ruling that the lower court should have dismissed the plaintiff-appellee's *Complaint for Declaration of the General Membership Meeting and Election of the AAVA as void ab initio with prayer for the Issuance of a Preliminary Injunction and/or TRO and Status Quo Order* because it is the Housing and Land Use Regulatory Board that has jurisdiction over the dispute.

On August 23, 2007, Mateo filed a complaint with the Supreme Court, contending that respondent judge did not have the judicial authority to hear and decide the issues involved in Civil Case No. 2003-433 for want of jurisdiction. According to complainant, this was brought to the attention of respondent judge, but the latter, being grossly ignorant of existing laws and rules, if not completely insolent of the same, and with grave abuse of discretion, took cognizance of the case.

In his comment, respondent judge argued that the error he allegedly committed could be corrected by an available judicial remedy. He maintained that if he erroneously assumed jurisdiction over Civil Case No. 2003-433, the proper recourse available to complainant was not an administrative complaint, but a petition for *certiorari* under Rule 65 of the Rules of Court.

The Investigating Justice recommended that the instant administrative case against respondent judge be dismissed. This Court takes the opposite view.

It is true that to constitute gross ignorance of the law, it is not enough that the subject decision, order, or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence but, most importantly, he must be moved by bad faith, fraud, dishonesty, or corruption.[29]

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[29] *The Officers and Members of the Integrated Bar of the Philippines, Baguio-Benguet Chapter v. Judge Pamintuan*, 485 Phil. 473, 489 (2004).

However, when the law is so elementary — and the matter of jurisdiction is an elementary principle that judges should be knowledgeable of — not to be aware of it constitutes gross ignorance of the law. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural rules. They are expected to keep abreast of our laws and the changes therein as well as with the latest decisions of the Supreme Court. They owe it to the public to be legally knowledgeable, for ignorance of the law is the mainspring of injustice. Judicial competence requires no less. It is a truism that the life chosen by a judge as a dispenser of justice is demanding. By virtue of the delicate position which he occupies in society, he is duty bound to be the embodiment of competence and integrity.[30]

On the matter of the order finding complainant guilty of indirect contempt, we also find the action of respondent judge sadly wanting. Section 4, Rule 71 of the same Rules provides:

> Sec. 4. *How proceedings commenced.* – Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.
>
> In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but **said petition shall be docketed, heard and decided separately,** unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.[31]

The Rules are unequivocal. Indirect contempt proceedings may be initiated only in two ways: (1) *motu proprio* by the

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[30] *Espino v. Hon. Salubre*, 405 Phil. 331 (2001).

[31] Emphasis supplied.

court; or (2) through a verified petition and upon compliance with the requirements for initiatory pleadings. The procedural requirements are mandatory considering that contempt proceedings against a person are treated as criminal in nature.[32] Conviction cannot be had merely on the basis of written pleadings.[33]

The records do not indicate that complainant was afforded an opportunity to rebut the charges against him. Respondent judge should have conducted a hearing in order to provide complainant the opportunity to adduce before the court documentary or testimonial evidence in his behalf. The hearing also allows the court a more thorough evaluation of the circumstances surrounding the case, including the chance to observe the accused present his side in open court and subject his defense to interrogation from the complainants or from the court itself.[34]

It must be remembered that the power to punish for contempt should be used sparingly with caution, restraint, judiciousness, deliberation, and due regard to the provisions of the law and the constitutional rights of the individual.[35] In this respect, respondent judge failed to measure up to the standards demanded of member of the judiciary.

As already mentioned above, gross ignorance of the law or procedure is classified as a serious charge under Section 8(9), Rule 140, Revised Rules of Court, and a respondent found guilty of serious charge may be punished by: a) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; b) suspension from office without salary and other benefits for

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[32] *Atty. Cañas v. Judge Castigador*, 401 Phil. 618, 630 (2000).

[33] *Soriano v. Court of Appeals*, G.R. No. 128938, June 4, 2004, 431 SCRA 1, 8.

[34] *Aquino v. Ng*, G.R. No. 155631, July 27, 2007, 528 SCRA 277.

[35] *Ruiz v. Judge How*, 459 Phil. 728 (2003).

more than three (3) months but not exceeding six (6) months; or c) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

In this case, we find respondent judge guilty of gross ignorance of the law, and impose upon him a fine of ₱40,000.00.

**e.) A.M. No. RTJ-07-2079**

On January 19, 2006, Bennie Cuason (Cuason) was charged before the RTC, Muntinlupa City, with estafa under Article 315, paragraph 2(a) of the Revised Penal Code, for defrauding Brigadier General Meliton D. Goyena (Gen. Goyena) (Ret.) by convincing the latter to invest, entrust, and/or deliver the amount of Twenty Million Pesos (₱20,000,000.00) on the promise that the former would return the investment with interest, plus two (2) Condominium Certificates of Title over residential units on the 20th floor at Tower B of Diamond Bay Towers Condominium, with a total value of Nine Million Five Hundred Ninety-Two Thousand Pesos (₱9,592,000.00). Gen. Goyena gave the amount of Twenty Million Pesos (₱20,000,000.00) to the accused and received two (2) condominium certificates of title with numbers 6893 and 6894. After verification, complainant found that the condominium units were non-existent, or had not yet been constructed.

The case was docketed as Criminal Case No. 06-179 and was raffled to RTC, Branch 204, Muntinlupa City, presided over by Judge Juanita T. Guerrero (Judge Guerrero).

On February 14, 2006, accused Cuason, through counsel, filed with the RTC an *entry of appearance with a plea to determine whether or not probable cause exists for the purpose of issuance of a warrant of arrest*. Complainant, also through counsel, subsequently filed a *Motion to deny the application for judicial determination of probable cause and to cite accused in contempt of this Honorable Court on the ground of forum shopping*. On April 4, 2006, accused Cuason filed his comment and/or opposition thereto, and on April 10, 2006, accused Cuason filed a *supplemental comment and/or opposition to the motion*.

With the designation of RTC, Branch 204, Muntinlupa City, as a special court for drug cases on May 2, 2006, the case was

re-raffled to the sala of respondent judge. After hearing the respective arguments of the parties, respondent judge issued an omnibus order dated September 4, 2006, dismissing Criminal Case No. 06-179. The pertinent portions of the omnibus order read as follows:

> On this first issue, this Court, after a careful scrutiny of the arguments and evidence of both parties, believes that there was payment already made as to the principal obligation as admitted by the complainant in his affidavit dated September 20, 2005 (page 3, par. 17) and what is being left is the payment of interest which, under the premises, is in [the] form of condominium certificates. So also, while the complainant questions the authenticity of those certificates as well as the existence of [the] condominium units subject thereof, accused, indubitably, was able to satisfy this Court as to the authenticity of the questioned certificates and the existence of the units by showing proofs to that effect.

On September 6, 2006, Gen. Goyena filed with the RTC a *very urgent manifestation with motion for the court to conduct ocular inspection,* and on September 22, 2006, he filed an *omnibus motion for reconsideration, ocular inspection and inhibition,* anchored on the following grounds: 1) as correctly found by the Office of the City Prosecutor of Muntinlupa City, the two (2) condominium units used in partly settling the liabilities of the accused to the private complainant do not exist – a fact that should have been established by now, if only the court allowed the ocular inspection prayed for; 2) the court overlooked the pronouncement in the very case it has relied on, that "Allado and Salonga constitute exceptions to the general rule and may be invoked only if similar circumstances are clearly shown to exist"; and 3) the order dismissing the case was improperly or irregularly issued.

On September 18, 2006, complainant filed a letter-complaint addressed to then Supreme Court Chief Justice Artemio Panganiban, charging respondent judge with abuse of judicial authority and discretion, serious irregularity, and gross ignorance of the law, allegedly shown by the latter's act of willfully and knowingly reversing the well-grounded finding of probable cause made by the Office of the City Prosecutor of Muntinlupa City.

Thereafter, respondent judge issued an order dated October 4, 2006, inhibiting himself from sitting in Criminal Case No. 06-179, and directing that the records of the case be forwarded to the Office of the Clerk of Court of the RTC, Muntinlupa City, for appropriate re-raffling. The case was eventually re-raffled to the RTC, Branch 206, Muntinlupa City, presided over by Judge Patricia Manalastas–de Leon (Judge Manalastas-De Leon).

In his memorandum dated September 24, 2007, Court Administrator Lock found ample basis to charge respondent judge with delay in rendering an order and for abuse of judicial discretion and authority.

The OCA stated that Criminal Case No. 06-179 was assigned to respondent judge on May 2, 2006, a fact which the latter did not dispute. More than a month later, or on June 19, 2006, respondent judge set accused Cuason's *motion to determine whether or not a probable cause exists for the purpose of the issuance of a warrant of arrest* and complainant's *motion to deny application for judicial determination of probable cause and to cite accused in contempt of this Honorable Court on the ground of forum shopping* for hearing on July 17, 2006. It must be stressed that accused Cuason and complainant filed their respective motions on February 14, 2006 and on March 22, 2006, or while the case was still pending in the sala of Judge Guerrero. After hearing the said motions on July 17, 2006, it took another forty-eight (48) days for respondent judge to issue the omnibus order dated September 4, 2006, dismissing the case for lack of probable cause.

In his comment dated November 23, 2007, respondent judge insists that the charge filed against him should be dismissed.

This Court finds that respondent judge's delay in the determination of probable cause clearly runs counter to the provisions of Section 6, Rule 112 of the Revised Rules of Criminal Procedure, which provides:

Sec. 6. *When warrant of arrest may issue*. – (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint

or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rules. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

While respondent judge could not have ascertained the existence of probable cause for the issuance of an arrest warrant against Cuason within ten (10) days from the filing of the complaint or information – Criminal Case No. 06-179 having been re-raffled to his sala only on May 2, 2006 – prudence demanded that respondent judge should have determined the existence of probable cause within ten (10) days from July 17, 2006, the date he heard the respective arguments of the parties. This interpretation is in keeping with the provisions of Section 6, Rule 112.

By allowing forty-eight (48) days to lapse before issuing the two-page omnibus order dated September 4, 2006, respondent judge should be held liable for undue delay in rendering an order, which is classified as a less serious charge under Section 9(1), Rule 140 of the Rules of Court, punishable by suspension from office without salary and other benefits for not less than one (1) month or more than three (3) months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

Furthermore, the Court agrees with the OCA that the respondent judge is guilty of abuse of judicial discretion and authority.

The information in Criminal Case No. 06-179 clearly accuses Cuason of falsely pretending that he can return the investment of complainant by paying cash and two (2) condominium units when in fact these units do not exist or have not yet been constructed. The issue therefore boils down to whether or not

the condominium units exist, and the incontrovertible proof of this are the condominium units themselves. The logical thing to do would have been to order the conduct of an ocular inspection. Instead of an ocular inspection, respondent relied on the certificate of registration, the development permit, the license to sell, the building permit, and the Condominium Certificate of Title — on the basis of which the judge ordered the dismissal of the case. It may be that an ocular inspection was premature at the time the respondent dismissed the case because at that time the case was not yet set for the presentation of evidence of the parties. Nevertheless, it now appears that the pieces of evidence relied upon by the respondent do not fully support his conclusion.

Section 4, Rule 128 of the Rules of Court provides that "evidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence." "Relevancy is, therefore, determinable by the rules of logic and human experience…Relevant evidence is any class of evidence which has 'rational probative value' to the issue in controversy."[36] Logic and human experience teach us that the documents relied upon by respondent do not constitute the best evidence to prove the existence or non-existence of the condominium units. To repeat, the best evidence would have been adduced by an ocular inspection of the units themselves.

Judge Lerma should also have exercised caution in determining the existence of probable cause. At the very least, he should have asked the prosecutor to present additional evidence, in accordance with Section 6, Rule 112 of the Revised Rules of Criminal Procedure or, in the alternative, to show cause why the case should not be dismissed instead of precipitately ordering the dismissal of the case. The circumstances required the exercise of caution considering that the case involved estafa in the considerable amount of ₱20 Million for which the complainant paid ₱129,970.00 in docket fees before the Office of the City Prosecutor and later ₱167,114.60 as docket fee for the filing of the Information before the RTC.

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[36] Florenz Regalado, *Remedial Law Compendium*, Vol. II, 6th Rev. Ed., p. 436.

For this particular violation, we find respondent judge guilty and impose upon him a fine of ₱21,000.00.

As an unflattering footnote to these administrative offenses, the OCA, upon the authority of the Chief Justice, conducted a judicial audit from August 21-30, 2007 of the RTC, Branch 256, Muntinlupa. The initial result of the audit revealed that Judge Lerma failed to decide 30 civil cases and 11 criminal cases within the 90-day reglementary period. It also appears that 101 civil cases and 137 criminal cases remained unacted despite the lapse of a considerable period.

Judge Lerma had previously been sanctioned by this Court. In a resolution dated September 13, 2003 in A.M. No. RTJ-03-1799, entitled *Ma. Cristina Olondriz Pertierra v. Judge Alberto L. Lerma*, this Court found him liable for conduct unbecoming a judge and imposed upon him the penalty of reprimand. In that case, Judge Lerma was found having lunch with a lawyer who has a pending case in his sala.

The totality of all these findings underscore the fact that respondent judge's actions served to erode the people's faith and confidence in the judiciary. He has been remiss in the fulfillment of the duty imposed on all members of the bench in order to avoid any impression of impropriety to protect the image and integrity of the judiciary.

To reiterate, officers of the court have the duty to see to it that justice is dispensed evenly and fairly. Not only must they be honest and impartial, but they must also appear to be honest and impartial in the dispensation of justice. Judges should make sure that their acts are circumspect and do not arouse suspicion in the minds of the public. When they fail to do so, such acts cast doubt upon their integrity and ultimately on the judiciary in general.[37] "Courts will only succeed in their task and mission if the judges presiding over them are truly honorable men, competent and independent, honest and dedicated." [38]

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[37] *Procedure adopted by Judge Liangco Re: Raffle of Cases*, 391 Phil. 666 (2000).

[38] Ernesto L. Pineda, *LEGAL AND JUDICIAL ETHICS* (1999 ed.), p. 367.

Respondent judge failed to live up to the judiciary's exacting standards, and this Court will not withhold penalty when called for to uphold the people's faith in the Judiciary.[39]

**WHEREFORE,** premises considered, the Court *RULES*, as follows:

1) In A.M. No. RTJ-07-2076, Judge Alberto Lerma is found *GUILTY* of violating a Supreme Court directive, and we impose upon him a *FINE* in the total amount of *FIFTEEN THOUSAND PESOS* (₱15,000.00);

2) In A.M. No. RTJ-07-2080, Judge Alberto Lerma is *FINED* in the total amount of *FIFTEEN THOUSAND PESOS* (₱15,000.00) for violation of Supreme Court rules, directives, and circulars, and for making untruthful statements in his certificate of service;

3) In A.M. No. RTJ-07-2077, Judge Alberto Lerma is found *GUILTY* of gross misconduct and punished with the penalty of *DISMISSAL* from the service, with forfeiture of all benefits, except earned leave credits, with prejudice to reemployment in any government agency or instrumentality.

4) In A.M. No. RTJ-07-2078, we find Judge Alberto Lerma *GUILTY* of gross ignorance of the law, and impose upon him a *FINE* of *FORTY THOUSAND PESOS* (₱40,000.00); and

5) In A.M. No. RTJ-07-2079, we find Judge Alberto Lerma *GUILTY* of grave abuse of authority and undue delay in rendering an order, and impose upon him a *FINE* of *TWENTY–ONE THOUSAND PESOS* (₱21,000.00).

This Decision is final and immediately executory.

**SO ORDERED.**

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

[39] *Jabao v. Judge Bonilla*, 372 Phil. 823, 835 (1999), citing *Sadik v. Casar*, 266 SCRA 1 (1997); *Ortigas & Co, Ltd. Partnership v. Velasco*, 277 SCRA 342 (1997).

*Carpio Morales, J.,* The C.J. certifies that Justice Morales voted to concur with the *ponencia*.

*Velasco, Jr.* and *Perez, JJ.*, took no part.

*Peralta, J.,* on leave.

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**EN BANC**

[G.R. No. 164195. October 12, 2010]

**APO FRUITS CORPORATION and HIJO PLANTATION, INC.,** *petitioners, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; EMINENT DOMAIN; INHERENT POWER OF THE STATE TO TAKE PRIVATE PROPERTY FOR PUBLIC USE.—**Eminent domain is the power of the State to take private property for public use. It is an inherent power of State as it is a power necessary for the State's existence; it is a power the State cannot do without. As an inherent power, it does not need at all to be embodied in the Constitution; if it is mentioned at all, it is solely for purposes of limiting what is otherwise an unlimited power. The limitation is found in the Bill of Rights – that part of the Constitution whose provisions all aim at the protection of individuals against the excessive exercise of governmental powers.

**2. ID.; ID.; TWO ESSENTIAL LIMITATIONS THERETO .—** Section 9, Article III of the 1987 Constitution (which reads "*No private property shall be taken for public use without just compensation*.") provides two essential limitations to the power of eminent domain, namely, that (1) the purpose of taking must be for **public use** and (2) **just compensation** must be given to the owner of the private property. It is not accidental that Section 9 specifies that compensation should be "just" as the

safeguard is there to ensure a balance – property is not to be taken for public use at the expense of private interests; the public, through the State, must balance the injury that the taking of property causes through compensation for what is taken, ***value for value***.

**3. ID.; ID.; ID.; JUST COMPENSATION, DEFINED.—** The concept of "just compensation" is not new to Philippine constitutional law, but is not original to the Philippines; it is a transplant from the American Constitution. It found fertile application in this country particularly in the area of agrarian reform where the taking of private property for distribution to landless farmers has been equated to the "public use" that the Constitution requires. In *Land Bank of the Philippines v. Orilla*, a valuation case under our agrarian reform law, this Court had occasion to state: Constitutionally, "just compensation" is the sum equivalent to the market value of the property, broadly described as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition, or the fair value of the property as between the one who receives and the one who desires to sell, it being fixed at the time of the actual taking by the government. **Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator.** It has been repeatedly stressed by this Court that the true measure is not the taker's gain but the owner's loss. The word 'just' is used to modify the meaning of the word "compensation" to convey the idea that **the equivalent to be given for the property to be taken shall be real, substantial, full and ample.**

**4. ID.; ID.; ID.; ID.; ₱1,383,179,000.00 IS THE "REAL, SUBSTANTIAL, FULL AND AMPLE" COMPENSATION THE GOVERNMENT MUST PAY TO BE "JUST" TO THE LANDOWNERS; CASE AT BAR.—** In the present case, while the DAR initially valued the petitioners' landholdings at a total of ₱251,379,104.02, the RTC, acting as a special agrarian court, determined the actual value of the petitioners' landholdings to be ₱1,383,179,000.00. *This valuation, a finding of fact, has subsequently been affirmed by this Court, and is now beyond question.* In eminent domain terms, this amount is the "real, substantial, full and ample" compensation the government must pay to be "just" to the landowners.

Significantly, this final judicial valuation is far removed from the initial valuation made by the DAR; **their values differ by ₱1,131,799,897.00 –** in itself a very substantial sum that is roughly four times the original DAR valuation. We mention these valuations as they indicate to us *how undervalued the petitioners' lands had been at the start, particularly at the time the petitioners' landholdings were "taken."* This reason apparently compelled the petitioners to relentlessly pursue their valuation claims all they way up to the level of this Court.

**5. ID.; ID.; ID.; ID.; COMPENSATION, TO BE "JUST," MUST ALSO BE MADE WITHOUT DELAY; CASE AT BAR.—** Apart from the requirement that compensation for expropriated land must be fair and reasonable, **compensation, to be "just," must also be made without delay.** Without prompt payment, compensation cannot be considered "just" *if the property is immediately taken* as the property owner suffers the immediate deprivation of both his land and its fruits or income. This is the principle at the core of the present case where the petitioners were made to wait for more than a decade *after the taking of their property* before they actually received the full amount *of the principal* of the just compensation due them. **What they have not received to date is the income of their landholdings corresponding to what they would have received had no uncompensated taking of these lands been immediately made.** This income, in terms of the interest on the unpaid principal, is the subject of the current litigation.

**6. ID.; ID.; ID.; ID.; ID.; NECESSITY OF THE PAYMENT OF INTEREST TO COMPENSATE FOR ANY DELAY IN THE PAYMENT OF COMPENSATION FOR PROPERTY ALREADY TAKEN.—** We recognized in *Republic v. Court of Appeals* the need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken. x x x Aside from this ruling, *Republic* notably overturned the Court's previous ruling in *National Power Corporation vs. Angas* which held that just compensation due for expropriated properties is not a loan or forbearance of money but indemnity for damages for the delay in payment; since the interest involved is in the nature of damages rather than earnings from loans, then Art. 2209 of the Civil Code, which fixes legal interest at 6%, shall apply. In *Republic,* the Court recognized that **the**

**just compensation due to the landowners for their expropriated property amounted to an effective forbearance on the part of the State.** Applying the *Eastern Shipping Lines* ruling, the Court fixed the applicable interest rate at 12% per annum, computed from the time the property was taken until the full amount of just compensation was paid, in order to eliminate the issue of the constant fluctuation and inflation of the value of the currency over time. x x x We subsequently upheld *Republic's* 12% per annum interest rate on the unpaid expropriation compensation in the following cases: *Reyes v. National Housing Authority, Land Bank of the Philippines v. Wycoco, Republic v. Court of Appeals, land Bank of the Philippines v. Inperial, Phiippine Ports Authority v. Rosales-Bondoc,* and *Curata v. Philippine Ports Authority.*

**7. ID.; ID.; ID.; ID.; ID.; RULING IN *REPUBLIC V. COURT OF APPEALS* THAT IN DETERMINING THE JUST COMPENSATION FOR THIS EXCHANGE — THE LANDHOLDINGS IN EXCHANGE FOR THE LBP'S PAYMENT — THE MEASURE TO BE BORNE IN MIND IS NOT THE TAKER'S GAIN BUT THE OWNER'S LOSS; CASE AT BAR. —** Under the circumstances of the present case, we see no compelling reason to depart from the rule that *Republic* firmly established. Let it be remembered that shorn of its eminent domain and social justice aspects, what the agrarian land reform program involves is the **purchase** by the government, through the LBP, of agricultural lands for sale and distribution to farmers. As a purchase, it involves an exchange of values – the landholdings in exchange for the LBP's payment. **In determining the just compensation for this exchange, however, the measure to be borne in mind is not the taker's gain but the owner's loss since what is involved is the takeover of private property under the State's coercive power.** x x x The owner's loss, of course, is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. x x x If full compensation is not paid for property taken, then

the State must make up for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived; interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness. In the context of this case, when the LBP took the petitioners' landholdings without the corresponding full payment, it became liable to the petitioners for the income the landholdings would have earned had they not immediately been taken from the petitioners. What is interesting in this interplay, under the developments of this case, is that ***the LBP, by taking landholdings without full payment while holding on at the same time to the interest that it should have paid, effectively used or retained funds that should go to the landowners and thereby took advantage of these funds for its own account.*** From this point of view, the December 19, 2007 Resolution deleting the award of 12% interest is not only patently and legally wrong, but is also morally unconscionable for being grossly unfair and unjust.

**8. ID.; ID.; ID.; ID.; ID.; ID.; THAT DELAY IN PAYMENT OCCURRED CANNOT BE DISPUTED IN CASE AT BAR.** — That delay in payment occurred is not and cannot at all be disputed. While the LBP claimed that it made initial payments of ₱411,769,168.32 (out of the principal sum due of ₱1,383,179,000.00), **the undisputed fact is that the petitioners were deprived of their lands on December 9, 1996** (when titles to their landholdings were cancelled and transferred to the Republic of the Philippines), and **received full payment of the principal amount due them only on May 9, 2008.** In the interim, they received no income from their landholdings because these landholdings had been taken. Nor did they receive adequate income from what should replace the income potential of their landholdings because the LBP refused to pay interest while withholding the full amount of the principal of the just compensation due by claiming a grossly low valuation. This sad state continued for more than a decade. In any language and by any measure, a lengthy delay in payment occurred. x x x Presumably, had the landholdings been properly valued, the petitioners would have accepted the payment of

just compensation and there would have been no need to go to the extent of filing a valuation case. But, as borne by the records, the petitoners' lands were grossly undervalued by the DAR, leaving the petitioners with no choice but to file actions to secure what is justly due them. The DAR's initial gross undervaluation started the cycle of court actions that followed, where the LBP eventually claimed that it could not be faulted for seeking judicial recourse to defend the government's and its own interest in light of the petitioners' valuation claims. This LBP claim, of course, conveniently forgets that at the root of all these valuation claims and counterclaims was the initial grosss undervaluation by DAR that the LPBP stoutly defended. At the end, this undervaluation was proven incorrect by no less than this Court; the petitioners were proven correct in their claim, and the correct valuation - *more than five-fold the initial DAR valuation* - was decreed and bacame final.

**9. ID.; ID.; ID.; ID.; ID.; ID.; DELAY SHOULD NOT BE LAID AT THE DOORSTEPS OF THE GOVERNMENT, NOT AT THE PETITIONERS'; CASE AT BAR.—** In blunter terms, the government and the LBP cannot now be heard to claim that they were simply protecting their interests when they stubbornly defended their undervalued positions before the courts. The more apt and accurate statement is that they adopted a grossly unreasonable position and the adverse developments that followed, particularly the concomitant delay, should be directly chargeable to them. To be sure, the petitioners were not completely correct in the legal steps they took in their valuation claims. They initially filed their valuation claim before the DARAB instead of immediately seeking judicial intervention. The DARAB, however, contributed its share to the petitioners' error when it failed or refused to act on the valuation petitions for more than three (3) years. x x x While the petitioners were undisputedly mistaken in initially seeking recourse through the DAR, this agency itself – hence, the government – committed a graver transgression when it failed to act at all on the petitioners' complaints for determination of just compensation. In sum, in a balancing of the attendant delay-related circumstances of this case, delay should be laid at the doorsteps of the government, not at the petitioners'. We conclude, too, that the government should not be allowed to exculpate itself from this delay and should suffer all the consequences the delay caused.

**10. ID.; ID.; ID.; MERE PARTIAL PAYMENTS THAT AMOUNTED TO A MEASLY 5% OF THE ACTUAL VALUE OF THE PROPERTIES EXPROPRIATED NOT "PERTINENT" ENOUGH TO SATISFY THE FULL REQUIREMENT OF JUST COMPENSATION IN CASE AT BAR. —** While the LBP deposited the total amount of ₱71,891,256.62 into the petitioners' accounts (₱26,409,549.86 for AFC and ₱45,481,706.76 for HPI) at the time the landholdings were taken, these amounts were mere partial payments that only amounted to 5% of the ₱1,383,179,000.00 actual value of the expropriated properties. We point this aspect out to show that the initial payments made by the LBP when the petitioners' landholdings were taken, although promptly withdrawn by the petitioners, could not by any means be considered a fair exchange of values at the time of taking; in fact, the LBP's actual deposit could not be said to be substantial even from the original LBP valuation of ₱251,379,103.90. x x x The "pertinent amounts" allegedly deposited by LBP were mere partial payments that amounted to a measly 5% of the actual value of the properties expropriated. They could be the basis for the immediate taking of the expropriated property but by no stretch of the imagination can these nominal amounts be considered "pertinent" enough to satisfy the full requirement of just compensation – *i.e.*, the full and fair equivalent of the expropriated property, taking into account its income potential and the foregone income lost because of the immediate taking.

**11. ID.; ID.; ID.; ID.; ID.; THE 12% INTEREST COMPENSATES PETITIONERS FOR INCOME THEY WOULD HAVE HAD IN ALMOST 12 YEARS HAD THEY BEEN PROPERLY COMPENSATED FOR THEIR PROPERTIES AT THE TIME OF THE TAKING; CASE AT BAR. —** Quite clearly, the Court imposed 12% interest based on the ruling in *Republic v. Court of Appeals* that "*x x x if property is taken for public use before compensation is deposited with the court having jurisdiction over the case,* ***the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court****. In fine, between the taking of the property and the actual payment, legal interest[s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.*" This is the same legal principle applicable

to the present case, as discussed above. While the LBP immediately paid the remaining balance on the just compensation due to the petitioners after this Court had fixed the value of the expropriated properties, it overlooks one essential fact – from the time that the State took the petitioners' properties until the time that the petitioners were fully paid, almost 12 long years passed. This is the rationale for imposing the 12% interest – in order to compensate the petitioners for the income they would have made had they been properly compensated for their properties at the time of the taking.

**12. ID.; ID.; ID.; ID.; ID.; ID.; EQUITABLE REDUCTION OF INTEREST CHARGES INAPPROPRIATE WHERE INTEREST INVOLVED RUNS AS A MATTER OF LAW; CASE AT BAR. —** While Justice Chico-Nazario admitted that the petitioners were entitled to the 12% interest, she saw it appropriate to equitably reduce the interest charges from ₱1,331,124,223.05 to ₱400,000,000.00. In support of this proposal, she enumerated various cases where the Court, pursuant to Article 1229 of the Civil Code, equitably reduced interest charges. We differ with our esteemed colleague's views on the application of equity. While we have equitably reduced the amount of interest awarded in numerous cases in the past, those cases involved interest that was essentially consensual in nature, *i.e.*, interest stipulated in signed agreements between the contracting parties. In contrast, the interest involved in the present case "runs as a **matter of law** and follows as a matter of course from the right of the landowner to be placed in as good a position as money can accomplish, as of the date of taking." x x x Equity and equitable principles only come into full play when a gap exists in the law and jurisprudence.[34] As we have shown above, established rulings of this Court are in place for full application to the present case. There is thus no occasion for the equitable consideration that Justice Chico-Nazario suggested.

**13. ID.; ID.; ID.; ID.; ID.; ID.;FULL PAYMENT OF PRINCIPAL SUM OF THE JUST COMPENSATION DOES NOT JUSTIFY A REDUCTION OF THE INTEREST DUE; CASE AT BAR. —** Neither can LBP's payment of the full compensation due before the finality of the judgment of this Court justify the reduction of the interest due them. To rule otherwise would be to forget that the petitioners had to wait twelve years from

the time they gave up their lands before the government fully paid the principal of the just compensation due them. These were twelve years when they had no income from their landholdings because these landholdings have immediately been taken; no income, or inadequate income, accrued to them from the proceeds of compensation payment due them because full payment has been withheld by government. If the full payment of the principal sum of the just compensation is legally significant at all under the circumstances of this case, the significance is only in putting a stop to the running of the interest due because the principal of the just compensation due has been paid. To close our eyes to these realities is to condone what is effectively a confiscatory action in favor of the LBP.

**14. POLITICAL LAW; DECLARATION OF PRINCIPLES AND STATE POLICIES; LAND REFORM PROGRAM; GREATER PUBLIC INTEREST WOULD BE SERVED IF THE LBP CAN CONTRIBUTE TO THE CREDIBILITY OF THE GOVERNMENT'S LAND REFORM PROGRAM THROUGH THE CONSCIENTIOUS HANDLING OF ITS PART OF THIS PROGRAM. —** It would be utterly fallacious, too, to argue that this Court should tread lightly in imposing liabilities on the LBP because this bank represents the government and, ultimately, the public interest. Suffice it to say that public interest refers to what will benefit the public, not necessarily the government and its agencies whose task is to contribute to the benefit of the public. Greater public benefit will result if government agencies like the LBP are conscientious in undertaking its tasks in order to avoid the situation facing it in this case. **Greater public interest would be served if it can contribute to the credibility of the government's land reform program through the conscientious handling of its part of this program.**

**15. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; IMMUTABILITY OF JUDGMENTS; EXCEPTIONS. —** As a rule, a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest Court of the land, rendered it. In the past, however, we have recognized exceptions to this rule by reversing

judgments and recalling their entries in the interest of substantial justice and where special and compelling reasons called for such actions. Notably, in *San Miguel Corporation v. National Labor Relations Commission*, *Galman v. Sandiganbayan*, *Philippine Consumers Foundation v. National Telecommunications Commission*, and *Republic v. de los Angeles*, we reversed our judgment on the **second** motion for reconsideration, while in *Vir-Jen Shipping and Marine Services v. National Labor Relations Commission*, we did so on a **third** motion for reconsideration. In *Cathay Pacific v. Romillo* and *Cosio v. de Rama*, we modified or amended our ruling on the second motion for reconsideration. More recently, in the cases of *Munoz v. Court of Appeals*, *Tan Tiac Chiong v. Hon. Cosico*, *Manotok IV v. Barque*, and *Barnes v. Padilla*, we recalled entries of judgment after finding that doing so was in the interest of substantial justice.

**16. ID.; ID.; ID.; ID.; ID.; AGRARIAN REFORM PROGRAM GIVEN PRIMARY IMPORTANCE THAN STABILITY OF JURISPRUDENCE IN CASE AT BAR. —** That the issues posed by this case are of transcendental importance is not hard to discern from these discussions. A constitutional limitation, guaranteed under no less than the all-important Bill of Rights, is at stake in this case: how can compensation in an eminent domain be "just" when the payment for the compensation for property already taken has been unreasonably delayed? To claim, as the assailed Resolution does, that only private interest is involved in this case is to forget that an expropriation involves the government as a necessary actor. It forgets, too, that under eminent domain, the constitutional limits or standards apply to government who carries the burden of showing that these standards have been met. Thus, to simply dismiss this case as a private interest matter is an extremely shortsighted view that this Court should not leave uncorrected. As duly noted in the above discussions, this issue is not one of first impression in our jurisdiction; the consequences of delay in the payment of just compensation have been settled by this Court in past rulings. Our settled jurisprudence on the issue alone accords this case primary importance as a contrary ruling would unsettle, on the flimsiest of grounds, all the rulings we have established in the past. More than the stability of our jurisprudence, the matter before us is of transcendental importance to the nation because of the subject matter involved – agrarian reform, a

societal objective that the government has unceasingly sought to achieve in the past half century. This reform program and its objectives would suffer a major setback if the government falters or is seen to be faltering, wittingly or unwittingly, through lack of good faith in implementing the needed reforms.

**17. ID.; ID.; ID.; ID.; ID.; RULES OF PROCEDURE SHOULD BE USED TO HELP SECURE, NOT OVERRIDE, SUBSTANTIAL JUSTICE. —** As we have ruled often enough, rules of procedure should not be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override, substantial justice. Based on all these considerations, particularly the patently illegal and erroneous conclusion that the petitioners are not entitled to 12% interest, we find that we are duty-bound to re-examine and overturn the assailed Resolution. We shall completely and inexcusably be remiss in our duty as defenders of justice if, given the chance to make the rectification, we shall let the opportunity pass.

**BERSAMIN, *J., dissenting opinion*:**

**1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENTS; EXCEPTIONS; NONE EXIST IN THE CASE AT BAR. —** I concede that the immutability doctrine admits several exceptions, such as: (*a*) the correction of clerical errors; (*b*) the *nunc pro tunc* entries that cause no prejudice to any party; (*c*) void judgments; and (*d*) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. Yet, my review of the arguments raised in the petitioners' *motion for reconsideration* discloses no compelling reason to deviate from the holding that none of the exceptions applies herein. x x x The resolution dated December 19, 2007 promulgated by the Third Division (deleting the award of interest of 12% *per annum* on the just compensation and the award of attorney's fees) already attained finality. Entry of judgment was in fact issued on May 16, 2008. In order to accord with the doctrine of immutability of judgment, the resolution dated December 4, 2009 rejected the petitioners' *second motion for reconsideration (with respect to the denial of the award of legal interest and attorney's fees)*, pointing out that granting the motion would render nugatory the time-

honored doctrine of immutability; that none of the recognized exceptions to the doctrine of immutability applied to the petitioners; that even if the reopening of the final judgment was allowed, the petitioners were still not entitled to recover interest on the just compensation because there had been no delay in paying their just compensation; and that granting the motion would produce more harm than good, considering that such reopening of a final judgment would surely open the floodgates to petitions for the resurrection of litigations long ago settled. x x x I do not think that the petitioners established the existence of any of the special and compelling considerations that supposedly exempted this case from the application of the immutability doctrine.

**2. ID.; ID.; ID.; ID.; ID.; THERE WAS NO DELAY IN PAYMENT OF JUST COMPENSATION NECESSITATING PAYMENT OF INTEREST TO PETITIONERS IN CASE AT BAR. —** Neither was it unjust to deny interest to the petitioners, who were not entitled to interest in the face of the showing that Land Bank of the Philippines (LBP) had not unduly delayed paying their just compensation. x x x As far as I am concerned, nothing in the *motion for reconsideration* effectively refutes the ratiocination rendered in the resolution of December 4, 2009 which denied the petitioners' second motion for reconsideration (with respect to the denial of the award of legal interest and attorney's fees), and reiterated the decision dated February 6, 2007 and the resolution dated December 19, 2007 of the Third Division. With LBP not being guilty of delay in paying to the petitioners their just compensation, any plea of suffering substantial injustice from the denial of interest should be justifiably rejected.

**3. ID.; ID.; ID.; ID.; A PRIVATE CLAIM FOR INTEREST AND ATTORNEY'S FEES DOES NOT INVOLVE AN ISSUE OF PARAMOUNT PUBLIC INTEREST TO WARRANT RELAXATION OF THE DOCTRINE OF IMMUTABILITY IN FAVOR OF PETITIONERS. —** Lastly, I cannot bring myself to agree that this case is impressed at all with public interest, involving as it does only a "private claim for interest and attorney's fees which cannot even be classified as unprecedented," which "does not qualify either as a substantial or transcendental matter, or as an issue of paramount public

interest for no special or compelling circumstance was present to warrant the relaxation of the doctrine of immutability in favor of the petitioners."

**APPEARANCES OF COUNSEL**

*Herrera Teehankee Faylona Cabrera,* and *Sanidad & Villanueva Law Offices* for petitioners.

*The Government Corporate Counsel* for respondent.

**R E S O L U T I O N**

**BRION, *J.*:**

We resolve the petitioners' *motion for reconsideration* addressing our Resolution of December 4, 2009 whose dispositive portion directs:

> WHEREFORE, the Court denies the petitioners' second motion for reconsideration (with respect to the denial of the award of legal interest and attorney's fees), and reiterates the decision dated February 6, 2007 and the resolution dated December 19, 2007 of the Third Division.

For a fuller and clearer presentation and appreciation of this Resolution, we hark back to the roots of this case.

**Factual Antecedents**

Apo Fruits Corporation (*AFC*) and Hijo Plantation, Inc. (*HPI*), together also referred to as *petitioners,* were registered owners of vast tracks of land; AFC owned 640.3483 hectares, while HPI owned 805.5308 hectares. On October 12, 1995, they voluntarily offered to sell these landholdings to the government *via* Voluntary Offer to Sell applications filed with the Department of Agrarian Reform (*DAR*).

On October 16, 1996, AFC and HPI received separate notices of land acquisition and valuation of their properties from the DAR's Provincial Agrarian Reform Officer (*PARO*). At the assessed valuation of ₱165,484.47 per hectare, AFC's land was valued at ₱86,900,925.88, while HPI's property was valued

at ₱164,478,178.14. HPI and AFC rejected these valuations for being very low.

In its follow through action, the DAR requested the Land Bank of the Philippines (*LBP*) to deposit ₱26,409,549.86 in AFC's bank account and ₱45,481,706.76 in HPI's bank account, which amounts the petitioners then withdrew. *The titles over AFC and HPI's properties were thereafter cancelled, and new ones were issued on December 9, 1996 in the name of the Republic of the Philippines.*

On February 14, 1997, AFC and HPI filed separate petitions for determination of just compensation with the DAR Adjudication Board (*DARAB*). When the DARAB failed to act on these petitions for more than three years, AFC and HPI filed separate complaints for determination and payment of just compensation with the Regional Trial Court (*RTC*) of Tagum City, acting as a Special Agrarian Court. These complaints were subsequently consolidated.

On September 25, 2001, the RTC resolved the consolidated cases, fixing the just compensation for the petitioners' 1,338.6027 hectares of land[1] at ₱1,383,179,000.00, with interest on this amount at the prevailing market interest rates, computed from the taking of the properties on December 9, 1996 until fully paid, minus the amounts the petitioners already received under the initial valuation. The RTC also awarded attorney's fees.

LBP moved for the reconsideration of the decision. The RTC, in its order of December 5, 2001, modified its ruling and **fixed the interest at the rate of 12% per annum from the time the complaint was filed until finality of the decision.** The Third Division of this Court, in its Decision of February 6, 2007, affirmed this RTC decision.

On motion for reconsideration, the Third Division issued its Resolution of December 19, 2007, modifying its February 6, 2007 Decision by **deleting the 12% interest** due on the

[1] While the petitioners owned a total of 1,454.8791 hectares based on the landholdings stated in this Court's February 6, 2007 Decision, the RTC, in its decision, fixed just compensation for 1,388.6027 hectares of land.

balance of the awarded just compensation. *The Third Division justified the deletion by the finding that the LBP did not delay the payment of just compensation as it had deposited the pertinent amounts due to AFC and HPI within fourteen months after they filed their complaints for just compensation with the RTC.* The Court also considered that AFC had already collected approximately ₱149.6 million, while HPI had already collected approximately ₱262 million from the LBP. The Third Division also deleted the award of attorney's fees.

All parties moved for the reconsideration of the modified ruling. The Court uniformly denied all the motions in its April 30, 2008 Resolution. Entry of Judgment followed on May 16, 2008.

Notwithstanding the Entry of Judgment, AFC and HPI filed the following motions on May 28, 2008: (1) Motion for Leave to File and Admit Second Motion for Reconsideration; (2) Second Motion for Reconsideration, with respect to the denial of the award of legal interest and attorney's fees; and (3) Motion to Refer the Second Motion for Reconsideration to the Honorable Court *En Banc*.

The Third Division found the motion to admit the Second Motion for Reconsideration and the motion to refer this second motion to the Court *En Banc* meritorious, and accordingly referred the case to the Court *En Banc*. On September 8, 2009, the Court *En Banc* accepted the referral.

**The Court *En Banc* Resolution**

On December 4, 2009, the Court *En Banc*, by a majority vote, denied the petitioners' second motion for reconsideration based on two considerations.

*First*, the grant of the second motion for reconsideration runs counter to the immutability of final decisions. Moreover, the Court saw no reason to recognize the case as an exception to the immutability principle as the petitioners' private claim for the payment of interest does not qualify as either a substantial or transcendental matter or an issue of paramount public interest.

*Second*, on the merits, the petitioners are not entitled to recover interest on the just compensation and attorney's fees because they caused the delay in the payment of the just compensation due them; they erroneously filed their complaints with the DARAB when they should have directly filed these with the RTC acting as an agrarian court. Furthermore, the Court found it significant that the LBP deposited the pertinent amounts in the petitioners' favor within fourteen months after the petitions were filed with the RTC. Under these circumstances, the Court found no unreasonable delay on the part of LBP to warrant the award of 12% interest.

**The Chico-Nazario Dissent**

Justice Minita V. Chico-Nazario,[2] **the *ponente* of the original December 19, 2007 Resolution (deleting the 12% interest)**, dissented from the Court *En Banc*'s December 4, 2009 Resolution.

On the issue of immutability of judgment, Justice Chico-Nazario pointed out that under extraordinary circumstances, this Court has recalled entries of judgment on the ground of substantial justice. Given the special circumstances involved in the present case, the Court *En Banc* should have taken a second hard look at the petitioners' positions in their second motion for reconsideration, and acted to correct the clearly erroneous December 19, 2007 Resolution.

Specifically, Justice Chico-Nazario emphasized the obligation of the State, in the exercise of its inherent power of eminent domain, to pay just compensation to the owner of the expropriated property. To be just, the compensation must not only be the correct amount to be paid; it must also be paid within a reasonable time from the time the land is taken from the owner. If not, the State must pay the landowner interest, by way of damages, from the time the property was taken until just compensation is fully paid. This interest, deemed a part of just compensation due, has been established by prevailing jurisprudence to be 12% per annum.

[2] Retired from the Court on December 5, 2009.

On these premises, Justice Nazario pointed out that the government deprived the petitioners of their property on December 9, 1996, and paid the balance of the just compensation due them only on May 9, 2008. The delay of almost twelve years earned the petitioners interest in the total amount of ₱1,331,124,223.05.

Despite this finding, Justice Chico-Nazario did not see it fit to declare the computed interest to be totally due; she found it unconscionable to apply the full force of the law on the LBP because of the magnitude of the amount due. **She thus reduced the awarded interest to ₱400,000,000.00, or approximately 30% of the computed interest.**

**The Present Motion for Reconsideration**

In their motion to reconsider the Court *En Banc*'s December 4, 2009 Resolution (*the present Motion for Reconsideration*), the petitioners principally argue that: (a) the principle of immutability of judgment does not apply since the Entry of Judgment was issued even before the lapse of fifteen days from the parties' receipt of the April 30, 2008 Resolution and the petitioners timely filed their second motion for reconsideration within fifteen days from their receipt of this resolution; (b) the April 30, 2008 Resolution cannot be considered immutable considering the special and compelling circumstances attendant to the present case which fall within the exceptions to the principle of immutability of judgments; (c) the legal interest due is at 12% per annum, reckoned from the time of the taking of the subject properties and this rate is not subject to reduction. The power of the courts to equitably reduce interest rates applies solely to liquidated damages under a contract and not to interest set by the Honorable Court itself as due and owing in just compensation cases; and (d) the Honorable Court's fears that the interest payments due to the petitioners will produce more harm than good to the system of agrarian reform are misplaced and are based merely on conjectures.

**The Comment of the Land Bank of the Philippines**

The LBP commented on the petitioners' motion for reconsideration on April 28, 2010. It maintained that: (a) the

doctrine of immutability of the decisions of the Supreme Court clearly applies to the present case; (b) the LBP is not guilty of undue delay in the payment of just compensation as the petitioners were promptly paid once the Court had determined the final value of the properties expropriated; (c) the Supreme Court rulings invoked by the petitioners are inapplicable to the present case; (d) since the obligation to pay just compensation is not a forbearance of money, interest should commence only after the amount due becomes ascertainable or liquidated, and the 12% interest per annum applies only to the liquidated amount, from the date of finality of judgment; (e) the imposition of 12% interest on the balance of ₱971,409,831.68 is unwarranted because there was no unjustified refusal by LBP to pay just compensation, and no contractual breach is involved; (f) the deletion of the attorney's fees equivalent to 10% of the amount finally awarded as just compensation is proper; (g) this case does not involve a violation of substantial justice to justify the alteration of the immutable resolution dated December 19, 2007 that deleted the award of interest and attorney's fees.

## The Court's Ruling

**We find the petitioners' arguments meritorious and accordingly GRANT the present motion for reconsideration.**

### *Just compensation – a Basic Limitation on the State's Power of Eminent Domain*

At the heart of the present controversy is the Third Division's December 19, 2007 Resolution which held that the petitioners are not entitled to 12% interest on the balance of the just compensation belatedly paid by the LBP. In the presently assailed December 4, 2009 Resolution, we affirmed the December 19, 2007 Resolution's findings that: (a) the LBP deposited "pertinent amounts" in favor of the petitioners within fourteen months after they filed their complaint for determination of just compensation; and (b) the LBP had already paid the petitioners ₱411,769,168.32. We concluded then that these circumstances refuted the petitioners' assertion of unreasonable delay on the part of the LBP.

A re-evaluation of the circumstances of this case and the parties' arguments, viewed in light of the just compensation requirement in the exercise of the State's inherent power of eminent domain, compels us to re-examine our findings and conclusions.

Eminent domain is the power of the State to take private property for public use.[3] It is an inherent power of State as it is a power necessary for the State's existence; it is a power the State cannot do without.[4] As an inherent power, it does not need at all to be embodied in the Constitution; if it is mentioned at all, it is solely for purposes of limiting what is otherwise an unlimited power. The limitation is found in the Bill of Rights[5] – that part of the Constitution whose provisions all aim at the protection of individuals against the excessive exercise of governmental powers.

Section 9, Article III of the 1987 Constitution (which reads "*No private property shall be taken for public use without just compensation.*") provides two essential limitations to the power of eminent domain, namely, that (1) the purpose of taking must be for **public use** and (2) **just compensation** must be given to the owner of the private property.

It is not accidental that Section 9 specifies that compensation should be "just" as the safeguard is there to ensure a balance – property is not to be taken for public use at the expense of private interests; the public, through the State, must balance the injury that the taking of property causes through compensation for what is taken, ***value for value***.

Nor is it accidental that the Bill of Rights is interpreted liberally in favor of the individual and strictly against the government.

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[3] See *Masikip v. City of Pasig*, G.R. No. 136349, January 23, 2006, 479 SCRA 391, citing *Visayan Refining Co. v. Camus*, 40 Phil. 550, 558-559 (1919).

[4] See *Manapat v. Court of Appeals*, G.R. Nos. 110478, 116176 and 116491-503, October 15, 2007, 536 SCRA 32.

[5] See *Heirs of Alberto Saguitan v. City of Mandaluyong*, G.R. No. 135087, March 14, 2000, 328 SCRA 137.

The protection of the individual is the reason for the Bill of Rights' being; to keep the exercise of the powers of government within reasonable bounds is what it seeks.[6]

The concept of "just compensation" is not new to Philippine constitutional law,[7] but is not original to the Philippines; it is a transplant from the American Constitution.[8] It found fertile

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[6] *Id.*, citing *City of Manila v. Chinese Community of Manila*, 40 Phil. 349 (1919).

[7] The authority to exercise the power of eminent domain was expressly conferred to the Philippine Government through Section 63 of the Philippine Bill of 1902, which states:

That the Government of the Philippine Islands is hereby authorized, subject to the limitations and conditions prescribed in this Act, to acquire, require, hold, maintain, and convey title to real and personal property, and may acquire real estate for public uses by the exercise of the right of eminent domain. (Act of Congress of July 1, 1902.)

Section 74 of the same law, which deals with the authority of the Philippine Government to grant franchises and concessions, provides:

That the Government of the Philippine Islands may grant franchises, privileges, and concessions, including the **authority to exercise the right of eminent domain** for the construction and operation of works of public utility and service x x x: Provided, **That no private property shall be taken for any purpose under this section without just compensation paid or tendered therefor** x x x.

More specifically, Section 3 of the Jones Act (of 1916) provides that "[p]rivate property shall not be taken for public use without just compensation."

See *Visayan Refining Co. v. Camus*, *supra* note 3.

[8] We derived the concept of "just compensation" from the last clause of the Fifth Amendment to the United States Constitution, which reads: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; **nor shall private property be taken for public use, without just compensation**."

The Fifth Amendment does not prohibit the government from taking its citizens' property; rather, it merely prohibits the government from taking property without paying just compensation. (26 Am. Jur. 2d Eminent Domain § 3,

application in this country particularly in the area of agrarian reform where the taking of private property for distribution to landless farmers has been equated to the "public use" that the Constitution requires. In *Land Bank of the Philippines v. Orilla*,[9] a valuation case under our agrarian reform law, this Court had occasion to state:

> Constitutionally, "just compensation" is the sum equivalent to the market value of the property, broadly described as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition, or the fair value of the property as between the one who receives and the one who desires to sell, it being fixed at the time of the actual taking by the government. **Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator.** It has been repeatedly stressed by this Court that the true measure is not the taker's gain but the owner's loss. The word "just" is used to modify the meaning of the word "compensation" to convey the idea that **the equivalent to be given for the property to be taken shall be real, substantial, full and ample.**[10] [Emphasis supplied.]

In the present case, while the DAR initially valued the petitioners' landholdings at a total of ₱251,379,104.02,[11] the RTC, acting as a special agrarian court, determined the actual value of the petitioners' landholdings to be ₱1,383,179,000.00. *This valuation, a finding of fact, has subsequently been affirmed by this Court, and is now beyond question.* In eminent domain terms, this amount is the "real, substantial, full and ample"

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citing *Diamond Bar Cattle Co. v. U.S.*, 168 F.3d 1209 [10th Cir. 1999].) It is designed to secure compensation, not to limit governmental interference with property rights. (*Id.*, citing *Preseault v. I.C.C.*, 494 U.S. 1, 110 S. Ct. 914, 108 L. Ed. 2d 1 [1990].) It prevents the legislature (and other government actors) from depriving private persons of vested property rights except for a "public use" and upon payment of "just compensation." (*Id.*, citing *Landgraf v. USI Film Products*, 511 U.S. 244, 114 S. Ct. 1522, 128 L. Ed. 2d 229 [1994].)

[9] G.R. No. 157206, June 27, 2008, 556 SCRA 102, 116-117.

[10] *Id.*

[11] ₱86,900,925.88 for the land of AFC and ₱164,478,178.14 for HPI.

compensation the government must pay to be "just" to the landowners.

Significantly, this final judicial valuation is far removed from the initial valuation made by the DAR; **their values differ by ₱1,131,799,897.00** – in itself a very substantial sum that is roughly four times the original DAR valuation. We mention these valuations as they indicate to us *how undervalued the petitioners' lands had been at the start, particularly at the time the petitioners' landholdings were "taken."* This reason apparently compelled the petitioners to relentlessly pursue their valuation claims all they way up to the level of this Court.

While the LBP deposited the total amount of ₱71,891,256.62 into the petitioners' accounts (₱26,409,549.86 for AFC and ₱45,481,706.76 for HPI) at the time the landholdings were taken, these amounts were mere partial payments that only amounted to 5% of the ₱1,383,179,000.00 actual value of the expropriated properties. We point this aspect out to show that the initial payments made by the LBP when the petitioners' landholdings were taken, although promptly withdrawn by the petitioners, could not by any means be considered a fair exchange of values at the time of taking; in fact, the LBP's actual deposit could not be said to be substantial even from the original LBP valuation of ₱251,379,103.90.

Thus, the deposits might have been sufficient for purposes of the immediate taking of the landholdings but cannot be claimed as amounts that would excuse the LBP *from the payment of interest on the unpaid balance* of the compensation due. As discussed at length below, they were not enough to compensate the petitioners for the potential income the landholdings could have earned for them if no immediate taking had taken place. Under the circumstances, the State acted oppressively and was far from "just" in their position to deny the petitioners of the potential income that the immediate taking of their properties entailed.

***Just Compensation from the Prism of the Element of Taking.***

Apart from the requirement that compensation for expropriated land must be fair and reasonable, **compensation, to be "just," must also be made without delay.**[12] Without prompt payment, compensation cannot be considered "just" *if the property is immediately taken* as the property owner suffers the immediate deprivation of both his land and its fruits or income.

This is the principle at the core of the present case where the petitioners were made to wait for more than a decade *after the taking of their property* before they actually received the full amount *of the principal* of the just compensation due them.[13] **What they have not received to date is the *income of their landholdings* corresponding to what they would have received had no uncompensated taking of these lands been immediately made.** This income, in terms of the interest on the unpaid principal, is the subject of the current litigation.

We recognized in *Republic v. Court of Appeals*[14] the need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken. We ruled in this case that:

> The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, i[f] fixed at the time of the actual taking by the government. Thus, **if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court**. **In fine, between the taking of the property and**

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[12] *Land Bank v. Rodriguez*, G.R. No. 148892, May 6, 2010.

[13] *Land Bank of the Philippines v. Orilla*, *supra* note 9, at 117.

[14] G.R. No. 146587, July 2, 2002, 383 SCRA 611.

**the actual payment, legal interest[s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.**[15] [Emphasis supplied.]

Aside from this ruling, *Republic* notably overturned the Court's previous ruling in *National Power Corporation v. Angas*[16] which held that just compensation due for expropriated properties is not a loan or forbearance of money but indemnity for damages for the delay in payment; since the interest involved is in the nature of damages rather than earnings from loans, then Art. 2209 of the Civil Code, which fixes legal interest at 6%, shall apply.

In *Republic*, the Court recognized that **the just compensation due to the landowners for their expropriated property amounted to an effective forbearance on the part of the State.** Applying the *Eastern Shipping Lines* ruling,[17] the Court fixed the applicable interest rate at 12% per annum,

[15] *Id.* at 622-623.

[16] G. R. Nos. 60225-26, May 8, 1992, 208 SCRA 542.

[17] In *Eastern Shipping Lines, Inc. v. Court of Appeals* (G.R. No. 97412, July 12, 1994, 234 SCRA 78), we said:

1. When the obligation is breached, and **it consists in the payment of a sum of money**, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, **the rate of interest shall be 12% *per annum*** to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*.No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

computed from the time the property was taken until the full amount of just compensation was paid, in order to eliminate the issue of the constant fluctuation and inflation of the value of the currency over time. In the Court's own words:

> The Bulacan trial court, in its 1979 decision, was correct in imposing interest[s] on the zonal value of the property to be computed from the time petitioner instituted condemnation proceedings and "took" the property in September 1969. **This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% per annum should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time.**[18] [Emphasis supplied.]

We subsequently upheld *Republic's* 12% per annum interest rate on the unpaid expropriation compensation in the following cases: *Reyes v. National Housing Authority*,[19] *Land Bank of the Philippines v. Wycoco*,[20] *Republic v. Court of Appeals*,[21] *Land Bank of the Philippines v. Imperial*,[22] *Philippine Ports Authority v. Rosales-Bondoc*,[23] and *Curata v. Philippine Ports Authority*.[24]

These were the established rulings that stood before this Court issued the currently assailed Resolution of December 4, 2009. **These would be the rulings this Court shall reverse**

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3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

[18] *Supra* note 12.

[19] G.R. No. 147511, January 20, 2003, 395 SCRA 494.

[20] G.R. No. 140160, January 13, 2004, 419 SCRA 67.

[21] G.R. No. 147245, March 31, 2005, 454 SCRA 516.

[22] G.R. No. 157753, February 12, 2007, 515 SCRA 449.

[23] G.R. No. 173392, August 24, 2007, 531 SCRA 198.

[24] G.R. No. 154211-12, June 22, 2009, 590 SCRA 214.

**and de-establish if we maintain and affirm our ruling deleting the 12% interest on the unpaid balance of compensation due for properties already taken.**

Under the circumstances of the present case, we see no compelling reason to depart from the rule that *Republic* firmly established. Let it be remembered that shorn of its eminent domain and social justice aspects, what the agrarian land reform program involves is the **purchase** by the government, through the LBP, of agricultural lands for sale and distribution to farmers. As a purchase, it involves an exchange of values – the landholdings in exchange for the LBP's payment. **In determining the just compensation for this exchange, however, the measure to be borne in mind is not the taker's gain but the owner's loss**[25] **since what is involved is the takeover of private property under the State's coercive power.** As mentioned above, in the value-for-value exchange in an eminent domain situation, the State must ensure that the individual whose property is taken is not shortchanged and must hence carry the burden of showing that the "just compensation" requirement of the Bill of Rights is satisfied.

The owner's loss, of course, is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. The just compensation is made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property. If full compensation is not paid for property taken, then the State must make up for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived; interest on the unpaid compensation

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[25] *Province of Tayabas v. Perez*, 66 Phil. 467; *J.M. Tuazon & Co., Inc. v. Land Tenure Administration*, No. L-21064, February 18, 1970, 31 SCRA 413; *Municipality of Daet v. Court of Appeals*, No. L-35861, October 18, 1979, 93 SCRA 503; *Manotok v. National Housing Authority*, G.R. No. 55166, May 21, 1987, 150 SCRA 89.

becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness.

In the context of this case, when the LBP took the petitioners' landholdings without the corresponding full payment, it became liable to the petitioners for the income the landholdings would have earned had they not immediately been taken from the petitioners. What is interesting in this interplay, under the developments of this case, is that ***the LBP, by taking landholdings without full payment while holding on at the same time to the interest that it should have paid, effectively used or retained funds that should go to the landowners and thereby took advantage of these funds for its own account.***

From this point of view, the December 19, 2007 Resolution deleting the award of 12% interest is not only patently and legally wrong, but is also morally unconscionable for being grossly unfair and unjust. If the interest on the just compensation due – in reality the equivalent of the fruits or income of the landholdings would have yielded had these lands not been taken – would be denied, the result is effectively a confiscatory action by this Court in favor of the LBP. We would be allowing the LBP, for twelve long years, to have free use of the interest that should have gone to the landowners. Otherwise stated, **if we continue to deny the petitioners' present motion for reconsideration, we would – illogically and without much thought to the fairness that the situation demands – uphold the interests of the LBP, not only at the expense of the landowners but also that of substantial justice as well.**

Lest this Court be a party to this monumental unfairness in a social program aimed at fostering balance in our society, we now have to ring the bell that we have muted in the past, and formally declare that the LBP's position is legally and morally wrong. To do less than this is to leave the demands of the constitutional just compensation standard (in terms of law) and of our own conscience (in terms of morality) wanting and unsatisfied.

***The Delay in Payment Issue***

Separately from the demandability of interest because of the failure to fully pay for property already taken, a recurring issue in the case is the attribution of the delay.

That delay in payment occurred is not and cannot at all be disputed. While the LBP claimed that it made initial payments of ₱411,769,168.32 (out of the principal sum due of ₱1,383,179,000.00), **the undisputed fact is that the petitioners were deprived of their lands on December 9, 1996** (when titles to their landholdings were cancelled and transferred to the Republic of the Philippines), and **received full payment of the principal amount due them only on May 9, 2008.**

In the interim, they received no income from their landholdings because these landholdings had been taken. Nor did they receive adequate income from what should replace the income potential of their landholdings because the LBP refused to pay interest while withholding the full amount of the principal of the just compensation due by claiming a grossly low valuation. This sad state continued for more than a decade. In any language and by any measure, a lengthy delay in payment occurred.

An important starting point in considering attribution for the delay is that the **petitioners voluntarily offered to sell their landholdings to the government's land reform program**; they themselves submitted their Voluntary Offer to Sell applications to the DAR, and they fully cooperated with the government's program. The present case therefore is not one where substantial conflict arose on the issue of whether expropriation is proper; the petitioners voluntarily submitted to expropriation and surrendered their landholdings, although they contested the valuation that the government made.

Presumably, had the landholdings been properly valued, the petitioners would have accepted the payment of just compensation and there would have been no need for them to go to the extent of filing a valuation case. But, as borne by the records, the petitioners' lands were grossly undervalued by the DAR, leaving

the petitioners with no choice but to file actions to secure what is justly due them.

The DAR's initial gross undervaluation started the cycle of court actions that followed, where the LBP eventually claimed that it could not be faulted for seeking judicial recourse to defend the government's and its own interests in light of the petitioners' valuation claims. This LBP claim, of course, conveniently forgets that at the root of all these valuation claims and counterclaims was the initial gross undervaluation by DAR that the LBP stoutly defended. At the end, this undervaluation was proven incorrect by no less than this Court; the petitioners were proven correct in their claim, and the correct valuation – *more than five-fold the initial DAR valuation* – was decreed and became final.

All these developments cannot now be disregarded and reduced to insignificance. In blunter terms, the government and the LBP cannot now be heard to claim that they were simply protecting their interests when they stubbornly defended their undervalued positions before the courts. The more apt and accurate statement is that they adopted a grossly unreasonable position and the adverse developments that followed, particularly the concomitant delay, should be directly chargeable to them.

To be sure, the petitioners were not completely correct in the legal steps they took in their valuation claims. They initially filed their valuation claim before the DARAB instead of immediately seeking judicial intervention. The DARAB, however, contributed its share to the petitioners' error when it failed or refused to act on the valuation petitions for more than three (3) years. Thus, on top of the DAR undervaluation was the DARAB inaction after the petitioners' landholdings had been taken. This Court's Decision of February 6, 2007 duly noted this and observed:

> It is not controverted that this case started way back on 12 October 1995, when AFC and HPI voluntarily offered to sell the properties to the DAR. In view of the failure of the parties to agree on the valuation of the properties, the Complaint for Determination of Just Compensation was filed before the DARAB on 14 February 1997. Despite the lapse of more than three years from the filing of the

complaint, the DARAB failed to render a decision on the valuation of the land. Meantime, the titles over the properties of AFC and HPI had already been cancelled and in their place a new certificate of title was issued in the name of the Republic of the Philippines, even as far back as 9 December 1996. A period of almost 10 years has lapsed. For this reason, there is no dispute that this case has truly languished for a long period of time, the delay being mainly attributable to both official inaction and indecision, particularly on the determination of the amount of just compensation, to the detriment of AFC and HPI, which to date, have yet to be fully compensated for the properties which are already in the hands of farmer-beneficiaries, who, due to the lapse of time, may have already converted or sold the land awarded to them.

**Verily, these two cases could have been disposed with dispatch were it not for LBP's counsel causing unnecessary delay.** At the inception of this case, DARAB, an agency of the DAR which was commissioned by law to determine just compensation, sat on the cases for three years, which was the reason that AFC and HPI filed the cases before the RTC. We underscore the pronouncement of the RTC that "**the delay by DARAB in the determination of just compensation could only mean the reluctance of the Department of Agrarian Reform and the Land Bank of the Philippines to pay the claim of just compensation by corporate landowners.**"

To allow the taking of landowners' properties, and to leave them empty-handed while government withholds compensation is undoubtedly oppressive. [Emphasis supplied.]

These statements cannot but be true today as they were when we originally decided the case and awarded 12% interest on the balance of the just compensation due. While the petitioners were undisputedly mistaken in initially seeking recourse through the DAR, this agency itself – hence, the government – committed a graver transgression when it failed to act at all on the petitioners' complaints for determination of just compensation.

In sum, in a balancing of the attendant delay-related circumstances of this case, delay should be laid at the doorsteps of the government, not at the petitioners'. We conclude, too, that the government should not be allowed to exculpate itself from this delay and should suffer all the consequences the delay caused.

***The LBP's arguments on the applicability of cases imposing 12% interest***

The LBP claims in its Comment that our rulings in *Republic v. Court of Appeals*,[26] *Reyes v. National Housing Authority*,[27] and *Land Bank of the Philippines v. Imperial*,[28] cannot be applied to the present case.

According to the LBP, *Republic* is inapplicable because, *first*, the landowners in *Republic* remained unpaid, notwithstanding the fact that the award for just compensation had already been fixed by final judgment; in the present case, the Court already acknowledged that "pertinent amounts" were deposited in favor of the landowners within 14 months from the filing of their complaint. *Second*, while *Republic* involved an ordinary expropriation case, the present case involves expropriation for agrarian reform. *Finally*, the just compensation in *Republic* remained unpaid notwithstanding the finality of judgment, while the just compensation in the present case was immediately paid in full after LBP received a copy of the Court's resolution

We find no merit in these assertions.

As we discussed above, the "pertinent amounts" allegedly deposited by LBP were mere partial payments that amounted to a measly 5% of the actual value of the properties expropriated. They could be the basis for the immediate taking of the expropriated property but by no stretch of the imagination can these nominal amounts be considered "pertinent" enough to satisfy the full requirement of just compensation – *i.e.*, the full and fair equivalent of the expropriated property, taking into account its income potential and the foregone income lost because of the immediate taking.

We likewise find no basis to support the LBP's theory that *Republic* and the present case have to be treated differently

[26] *Supra* note 14.

[27] *Supra* note 19.

[28] *Supra* note 22.

because the first involves a "regular" expropriation case, while the present case involves expropriation pursuant to the country's agrarian reform program. In both cases, the power of eminent domain was used and private property was taken for public use. Why one should be different from the other, so that the just compensation ruling in one should not apply to the other, truly escapes us. If there is to be a difference, the treatment of agrarian reform expropriations should be stricter and on a higher plane because of the government's societal concerns and objectives. To be sure, the government cannot attempt to remedy the ills of one sector of society by sacrificing the interests of others within the same society.

Finally, we note that the finality of the decision (that fixed the value of just compensation) in *Republic* was not a material consideration for the Court in awarding the landowners 12% interest. The Court, in *Republic*, simply affirmed the RTC ruling imposing legal interest on the amount of just compensation due. In the process, the Court determined that the legal interest should be 12% after recognizing that the just compensation due was effectively a forbearance on the part of the government. Had the finality of the judgment been the critical factor, then the 12% interest should have been imposed **from the time the RTC decision fixing just compensation became final.** Instead, the 12% interest was imposed from the time that the *Republic* commenced condemnation proceedings and "took" the property.

The LBP additionally asserts that the petitioners erroneously relied on the ruling in *Reyes v. National Housing Authority*. The LBP claims that we cannot apply *Reyes* because it involved just compensation that remained unpaid despite the finality of the expropriation decision. LBP's point of distinction is that just compensation was immediately paid in the present case upon the Court's determination of the actual value of the expropriated properties. LBP claims, too, that in *Reyes*, the Court established that the refusal of the NHA to pay just compensation was unfounded and unjustified, whereas the LBP in the present case clearly demonstrated its willingness to pay just compensation. Lastly, in *Reyes*, the records showed that there was an outstanding balance that ought to be paid, while

the element of an outstanding balance is absent in the present case.

Contrary to the LBP's opinion, the imposition of the 12% interest in *Reyes* did not depend on either the finality of the decision of the expropriation court, or on the finding that the NHA's refusal to pay just compensation was unfounded and unjustified. Quite clearly, the Court imposed 12% interest based on the ruling in *Republic v. Court of Appeals* that "*x x x if property is taken for public use before compensation is deposited with the court having jurisdiction over the case,* ***the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court****. In fine, between the taking of the property and the actual payment, legal interest[s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.*"[29] This is the same legal principle applicable to the present case, as discussed above.

While the LBP immediately paid the remaining balance on the just compensation due to the petitioners after this Court had fixed the value of the expropriated properties, it overlooks one essential fact – from the time that the State took the petitioners' properties until the time that the petitioners were fully paid, almost 12 long years passed. This is the rationale for imposing the 12% interest – in order to compensate the petitioners for the income they would have made had they been properly compensated for their properties at the time of the taking.

Finally, the LBP insists that the petitioners quoted our ruling in *Land Bank of the Philippines v. Imperial* out of context. According to the LBP, the Court imposed legal interest of 12% per annum only after December 31, 2006, the date when the decision on just compensation became final.

The LBP is again mistaken. The *Imperial* case involved land that was expropriated pursuant to Presidential Decree

[29] *Supra* note 14.

[30] *Decreeing the Emancipation of Tenants from the Bondage of the*

No. 27,[30] and fell under the coverage of DAR Administrative Order (AO) No. 13.[31] This AO provided for the payment of a 6% annual interest if there is any delay in payment of just compensation. However, *Imperial* was decided in 2007 and AO No. 13 was only effective up to December 2006. Thus, the Court, relying on our ruling in the *Republic* case, applied the prevailing 12% interest ruling to the period when the just compensation remained unpaid *after* December 2006. It is for this reason that December 31, 2006 was important, not because it was the date of finality of the decision on just compensation.

***The 12% Interest Rate and the Chico-Nazario Dissent***

To fully reflect the concerns raised in this Court's deliberations on the present case, we feel it appropriate to discuss the Justice Minita Chico-Nazario's dissent from the Court's December 4, 2009 Resolution.

While Justice Chico-Nazario admitted that the petitioners were entitled to the 12% interest, she saw it appropriate to equitably reduce the interest charges from ₱1,331,124,223.05 to ₱400,000,000.00. In support of this proposal, she enumerated various cases where the Court, pursuant to Article 1229 of the Civil Code,[32] equitably reduced interest charges.

We differ with our esteemed colleague's views on the application of equity.

While we have equitably reduced the amount of interest awarded in numerous cases in the past, those cases involved

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*Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanisms Therefor.*

[31] *Rules and Regulations Governing the Grant of Increment of Six Percent (6%) Yearly Interest Compounded Annually on Lands Covered by Presidential Decree No. 27 and Executive Order No. 228* (Effective October 21, 1994). Amended by DAR AO No. 02, series of 2004 (Issued on November 4, 2004).

[32] Article 1229 states: "The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor."

interest that was essentially consensual in nature, *i.e.*, interest stipulated in signed agreements between the contracting parties. In contrast, the interest involved in the present case "runs as a **matter of law** and follows as a matter of course from the right of the landowner to be placed in as good a position as money can accomplish, as of the date of taking."[33]

Furthermore, the allegedly considerable payments made by the LBP to the petitioners cannot be a proper premise in denying the landowners the interest due them under the law and established jurisprudence. **If the just compensation for the landholdings is considerable, this compensation is not undue because the landholdings the owners gave up in exchange are also similarly considerable – AFC gave up an aggregate landholding of 640.3483 hectares, while HPI's gave up 805.5308 hectares**. When the petitioners surrendered these sizeable landholdings to the government, the incomes they gave up were likewise sizeable and cannot in any way be considered miniscule. The incomes due from these properties, expressed as interest, are what the government should return to the petitioners after the government took over their lands without full payment of just compensation. In other words, ***the value of the landholdings themselves should be equivalent to the principal sum of the just compensation due; interest is due and should be paid to compensate for the unpaid balance of this principal sum after taking has been completed.*** This is the compensation arrangement that should prevail if such compensation is to satisfy the constitutional standard of being "just."

Neither can LBP's payment of the full compensation due before the finality of the judgment of this Court justify the reduction of the interest due them. To rule otherwise would be to forget that the petitioners had to wait twelve years from the time they gave up their lands before the government fully paid the principal of the just compensation due them. These were twelve years when they had no income from their landholdings

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[33] *Republic v. Juan*, G.R. No. L-24740, July 30, 1979, 92 SCRA 26; citing 30 CJS 230.

because these landholdings have immediately been taken; no income, or inadequate income, accrued to them from the proceeds of compensation payment due them because full payment has been withheld by government.

If the full payment of the principal sum of the just compensation is legally significant at all under the circumstances of this case, the significance is only in putting a stop to the running of the interest due because the principal of the just compensation due has been paid. To close our eyes to these realities is to condone what is effectively a confiscatory action in favor of the LBP.

That the legal interest due is now almost equivalent to the principal to be paid is not *per se* an inequitable or unconscionable situation, considering the length of time the interest has remained unpaid – almost twelve long years. From the perspective of interest income, twelve years would have been sufficient for the petitioners to double the principal, even if invested conservatively, had they been promptly paid the principal of the just compensation due them. Moreover, **the interest**, however enormous it may be, **cannot be inequitable and unconscionable because it resulted directly from the application of law and jurisprudence** – standards that have taken into account fairness and equity in setting the interest rates due for the use or forebearance of money.

If the LBP sees the total interest due to be immense, it only has itself to blame, as this interest piled up because it unreasonably acted in its valuation of the landholdings and consequently failed to promptly pay the petitioners. To be sure, the consequences of this failure – *i.e.*, the enormity of the total interest due and the alleged financial hemorrhage the LBP may suffer – should not be the very reason that would excuse it from full compliance. To so rule is to use extremely flawed logic. To so rule is to disregard the question of how the LBP, a government financial institution that now professes difficulty in paying interest at 12% per annum, managed the funds that it failed to pay the petitioners for twelve long years.

It would be utterly fallacious, too, to argue that this Court should tread lightly in imposing liabilities on the LBP because

this bank represents the government and, ultimately, the public interest. Suffice it to say that public interest refers to what will benefit the public, not necessarily the government and its agencies whose task is to contribute to the benefit of the public. Greater public benefit will result if government agencies like the LBP are conscientious in undertaking its tasks in order to avoid the situation facing it in this case. **Greater public interest would be served if it can contribute to the credibility of the government's land reform program through the conscientious handling of its part of this program.**

As our last point, equity and equitable principles only come into full play when a gap exists in the law and jurisprudence.[34] As we have shown above, established rulings of this Court are in place for full application to the present case. There is thus no occasion for the equitable consideration that Justice Chico-Nazario suggested.

***The Amount Due the Petitioners as Just Compensation***

As borne by the records, the 12% interest claimed is only on the difference between the price of the expropriated lands (determined with finality to be ₱1,383,179,000.00) and the amount of ₱411,769,168.32 already paid to the petitioners. The difference between these figures amounts to the remaining balance of ₱971,409,831.68 that was only paid on May 9, 2008.

**As above discussed, this amount should bear interest at the rate of 12% per annum from the time the petitioners' properties were taken on December 9, 1996 up to the time of payment**. At this rate, the LBP now owes the petitioners the total amount of One Billion Three Hundred Thirty-One Million One Hundred Twenty-Four Thousand Two Hundred Twenty-Three and 05/100 Pesos (₱1,331,124,223.05), computed as follows:

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[34] See *Parent-Teachers' Association of St. Mathew Christian Academy v. Metropolitan Bank and Trust Co.*, G.R. No. 176518, March 2, 2010, citing *Tirazona v. Philippine EDS Techno-Service, Inc. (PET, Inc.)*, G.R. No. 169712, January 20, 2009, 576 SCRA 625, 626.

| | |
|---|---|
| Just Compensation | ₱971,409,831.68 |
| Legal Interest from 12/09/1996 To 05/09/2008 @ 12%/annum | |
| 12/09/1996 to 12/31/1996 23 days | 7,345,455.17 |
| 01/01/1997 to 12/31/2007 11 years | 1,282,260,977.82 |
| 01/01/2008 to 05/09/2008 130 days | 41,517,790.07 |
| | ₱1,331,124,223.05[35] |

***The Immutability of Judgment Issue***

As a rule, a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest Court of the land, rendered it.[36] In the past, however, we have recognized exceptions to this rule by reversing judgments and recalling their entries in the interest of substantial justice and where special and compelling reasons called for such actions.

Notably, in *San Miguel Corporation v. National Labor Relations Commission*,[37] *Galman v. Sandiganbayan*,[38] *Philippine Consumers Foundation v. National Telecommunications Commission*,[39] and *Republic v. de los Angeles*,[40] we reversed our judgment on the **second** motion for reconsideration, while in *Vir-Jen Shipping and Marine Services v. National Labor Relations Commission*,[41] we did so on a **third** motion for reconsideration. In *Cathay Pacific v. Romillo*[42] and *Cosio*

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[35] *Rollo*, p. 1337.

[36] *Equitable Banking Corp. v. Sadac*, G.R. No. 164772, June 8, 2006, 490 SCRA 380, 416-417.

[37] G.R. No. 82467, June 29, 1989, 174 SCRA 510.

[38] G.R. No. 72670, September 12, 1986, 144 SCRA 43.

[39] G.R. No. 63318, August 18, 1984, 131 SCRA 200.

[40] G.R. No. L-26112, October 4, 1971, 41 SCRA 422.

[41] G.R. No. 58011, November 18, 1983, 125 SCRA 577.

[42] G.R No. 64276, August 12, 1986, 143 SCRA 396.

*v. de Rama*,[43] we modified or amended our ruling on the second motion for reconsideration. More recently, in the cases of *Munoz v. Court of Appeals*,[44] *Tan Tiac Chiong v. Hon. Cosico*,[45] *Manotok IV v. Barque*,[46] and *Barnes v. Padilla*,[47] we recalled entries of judgment after finding that doing so was in the interest of substantial justice. In *Barnes*, we said:

> x x x Phrased elsewise, a final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.
>
> However, this Court has relaxed this rule in order to serve substantial justice considering (a) **matters of life, liberty, honor or property,** (b) **the existence of special or compelling circumstances**, (c) **the merits of the case,** (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.
>
> Invariably, rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflects this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself had already declared to be final. [48] [Emphasis supplied.]

That the issues posed by this case are of transcendental importance is not hard to discern from these discussions. A constitutional limitation, guaranteed under no less than the all-important Bill of Rights, is at stake in this case: how can

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[43] G.R. No. L-18452, May 20, 1966, 17 SCRA 207.

[44] G.R. No. 125451, January 20, 2000, 322 SCRA 741.

[45] 434 Phil. 753 (2002).

[46] G.R. No. 162335, December 18, 2008, 574 SCRA 468.

[47] 482 Phil. 903 (2004).

[48] *Id.* at 915.

compensation in an eminent domain be "just" when the payment for the compensation for property already taken has been unreasonably delayed? To claim, as the assailed Resolution does, that only private interest is involved in this case is to forget that an expropriation involves the government as a necessary actor. It forgets, too, that under eminent domain, the constitutional limits or standards apply to government who carries the burden of showing that these standards have been met. Thus, to simply dismiss this case as a private interest matter is an extremely shortsighted view that this Court should not leave uncorrected.

As duly noted in the above discussions, this issue is not one of first impression in our jurisdiction; the consequences of delay in the payment of just compensation have been settled by this Court in past rulings. Our settled jurisprudence on the issue alone accords this case primary importance as a contrary ruling would unsettle, on the flimsiest of grounds, all the rulings we have established in the past.

More than the stability of our jurisprudence, the matter before us is of transcendental importance to the nation because of the subject matter involved – agrarian reform, a societal objective that the government has unceasingly sought to achieve in the past half century. This reform program and its objectives would suffer a major setback if the government falters or is seen to be faltering, wittingly or unwittingly, through lack of good faith in implementing the needed reforms. Truly, agrarian reform is so important to the national agenda that the Solicitor General, no less, pointedly linked agricultural lands, its ownership and abuse, to the idea of revolution.[49] This linkage, to our mind, remains valid even if the landowner, not the landless farmer, is at the receiving end of the distortion of the agrarian reform program.

As we have ruled often enough, rules of procedure should not be applied in a very rigid, technical sense; rules of procedure

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[49] Oral arguments at the Supreme Court, *Hacienda Luisita* case, G.R. No. 171101, August 26, 2010.

are used only to help secure, not override, substantial justice.[50] As we explained in *Ginete v. Court of Appeals*:[51]

> Let it be emphasized that **the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice**. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final, as we are now constrained to do in the instant case.
>
> x x x x x x x x x
>
> The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.[52] [Emphasis supplied.]

Similarly, in *de Guzman v. Sandiganbayan*,[53] we had occasion to state:

> 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 ought to be, conscientiously guided by the norm that **when on the balance, technicalities take a backseat against substantive rights, and not the other way around.** Truly then, technicalities, in the

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[50] *Gregorio v. Court of Appeals*, G.R. No. L-43511, July 28, 1976, 72 SCRA 121; *Mc Entee v. Manotoc*, G.R. No. L-14968, October 27, 1961, 3 SCRA 279; *Lim Tanhu v. Ramolete*, G.R. No. L-40098, August 29, 1975, 66 SCRA 441.

[51] G.R. No. 127596, September 24, 1998, 292 SCRA 38.

[52] *Id.* at 51-52.

[53] 326 Phil. 182 (1996).

appropriate language of Justice Makalintal, "should give way to the realities of the situation. [Emphasis supplied.]

We made the same recognition in *Barnes*,[55] on the underlying premise that a court's primordial and most important duty is to render justice; in discharging the duty to render substantial justice, it is permitted to re-examine even a final and executory judgment.

Based on all these considerations, particularly the patently illegal and erroneous conclusion that the petitioners are not entitled to 12% interest, we find that we are duty-bound to re-examine and overturn the assailed Resolution. We shall completely and inexcusably be remiss in our duty as defenders of justice if, given the chance to make the rectification, we shall let the opportunity pass.

***Attorney's Fees***

We are fully aware that the RTC has awarded the petitioners attorney's fees when it fixed the just compensation due and decreed that interest of 12% should be paid on the balance outstanding after the taking of the petitioners' landholdings took place. The petitioners, however, have not raised the award of attorney's fees as an issue in the present motion for reconsideration. For this reason, we shall not touch on this issue at all in this Resolution.

**WHEREFORE,** premises considered, we *GRANT* the petitioners' motion for reconsideration. The Court *En Banc*'s Resolution dated December 4, 2009, as well as the Third Division's Resolutions dated April 30, 2008 and December 19, 2007, are hereby *REVERSED* and *SET ASIDE.*

The respondent Land Bank of the Philippines is hereby *ORDERED* to pay petitioners Apo Fruits Corporation and Hijo Plantation, Inc. interest at the rate of 12% per annum on the unpaid balance of the just compensation, computed from the date the Government took the properties on December 9, 1996,

[54] *Id.* at 191.

[55] *Supra* note 47.

until the respondent Land Bank of the Philippines paid on May 9, 2008 the balance on the principal amount.

Unless the parties agree to a shorter payment period, payment shall be in monthly installments at the rate of ₱60,000,000.00 per month until the whole amount owing, including interest on the outstanding balance, is fully paid.

Costs against the respondent Land Bank of the Philippines.

**SO ORDERED.**

*Carpio Morales, Velasco, Jr., Del Castillo, Villarama, Jr., Perez, Mendoza,* and *Sereno, JJ.,* concur.

*Corona, C.J.* and *Nachura, J.,* join the dissent of *J.* Bersamin.

*Leonardo-de Castro, J.,* maintains vote in the December 4, 2009 Resolution.

*Bersamin, J.,* dissents.

*Carpio* and *Abad, JJ.,* are on wellness leave.

*Peralta, J.,* on leave.

## D I S S E N T I N G O P I N I O N

**BERSAMIN, *J.*:**

By their *motion for reconsideration,* the petitioners seek the review and setting aside of the resolution dated December 4, 2009,[1] whereby the Court disposed as follows:

> WHEREFORE, the Court denies the petitioners' *second motion for reconsideration (with respect to the denial of the award of legal interest and attorney's fees),* and reiterates the decision dated February 6, 2007 and the resolution dated December 19, 2007 of the Third Division.
>
> SO ORDERED.

The petitioners contend that the doctrine of immutability of judgment does not apply because of the several special and

[1] *Rollo,* pp. 1428-1448.

compelling considerations exempting them from the application of the doctrine, namely: (*a*) that they suffered substantial injustice from the patently unjust denial of interest; (*b*) that their case, being impressed with public interest, had transcendental importance; and (*c*) that the fact that the Court *en banc* had accepted the referral by the Third Division indicated that the case deserved another review. They insist that the legal interest due on the just compensation paid to them *should be* 12% *per annum*, a rate that was not subject to reduction.

The majority vote to grant the *motion for reconsideration*. Alas, I cannot join the majority.

I dissent.

The resolution dated December 19, 2007 promulgated by the Third Division (deleting the award of interest of 12% *per annum* on the just compensation and the award of attorney's fees) already attained finality. Entry of judgment was in fact issued on May 16, 2008.

In order to accord with the doctrine of immutability of judgment, the resolution dated December 4, 2009 rejected the petitioners' *second motion for reconsideration (with respect to the denial of the award of legal interest and attorney's fees)*, pointing out that granting the motion would render nugatory the time-honored doctrine of immutability; that none of the recognized exceptions to the doctrine of immutability applied to the petitioners; that even if the reopening of the final judgment was allowed, the petitioners were still not entitled to recover interest on the just compensation because there had been no delay in paying their just compensation; and that granting the motion would produce more harm than good, considering that such reopening of a final judgment would surely open the floodgates to petitions for the resurrection of litigations long ago settled.

I concede that the immutability doctrine admits several exceptions, such as: (*a*) the correction of clerical errors; (*b*) the *nunc pro tunc* entries that cause no prejudice to any party; (*c*) void judgments; and (*d*) whenever circumstances transpire after the finality of the decision rendering its execution unjust

and inequitable. Yet, my review of the arguments raised in the petitioners' *motion for reconsideration* discloses no compelling reason to deviate from the holding that none of the exceptions applies herein. Consequently, I urge that we should continue to hold that the matters involved herein were different from any of those involved in the exceptions. I do not think that the petitioners established the existence of any of the special and compelling considerations that supposedly exempted this case from the application of the immutability doctrine.

Neither was it unjust to deny interest to the petitioners, who were not entitled to interest in the face of the showing that Land Bank of the Philippines (LBP) had not unduly delayed paying their just compensation.

In this regard, I consider worth reiterating the following relevant portions of the questioned resolution of December 4, 2009, to wit:

> No Interest is Due Unless There is Delay
> In Payment of Just Compensation
>
> Even assuming, for the sake of argument, that the Court allows the reopening of a final judgment, AFC and HPI are still not entitled to recover interest on the just compensation and attorney's fees.
>
> x x x x x x x x x
>
> In *Land Bank of the Philippines v. Wycoco*, however, the Court came to explicitly rule that interest is to be imposed on the just compensation only in case of delay in its payment, which fact must be sufficiently established. Significantly, *Wycoco* was moored on Article 2209, *Civil Code*, which provides:
>
> > Article 2209. If the obligation consists in the payment of money and **the debtor incurs in delay**, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum. (1108)
>
> The history of this case proves that Land Bank did not incur delay in the payment of the just compensation. As earlier mentioned, after the petitioners voluntarily offered to sell their lands on October 12, 1995, DAR referred their VOS applications to Land Bank for initial valuation. Land Bank initially fixed the just compensation at

₱165,484.47/hectare, *that is,* ₱86,900,925.88, for AFC, and ₱164,478,178.14, for HPI. However, both petitioners rejected Land Bank's initial valuation, prompting Land Bank to open deposit accounts in the petitioners' names, and to credit in said accounts the amounts equivalent to their valuations. Although AFC withdrew the amount of ₱26,409,549.86, while HPI withdrew ₱45,481,706.76, they still filed with DARAB separate complaints for determination of just compensation. When DARAB did not act upon their complaints for more than three years, AFC and HPI commenced their respective actions for determination of just compensation in the Tagum City RTC, which rendered its decision on September 25, 2001.

It is true that Land Bank sought to appeal the RTC's decision to the CA, by filing a notice of appeal; and that Land Bank filed in March 2003 its petition for *certiorari* in the CA only because the RTC did not give due course to its appeal. Any intervening delay thereby entailed could not be attributed to Land Bank, however, considering that assailing an erroneous order before a higher court is a remedy afforded by law to every losing party, who cannot thus be considered to act in bad faith or in an unreasonable manner as to make such party guilty of unjustified delay. As stated in *Land Bank of the Philippines v. Kumassie Plantation*:

> The mere fact that LBP appealed the decisions of the RTC and the Court of Appeals does not mean that it deliberately delayed the payment of just compensation to KPCI. x x x It may disagree with DAR and the landowner as to the amount of just compensation to be paid to the latter and may also disagree with them and bring the matter to court for judicial determination. This makes LBP an indispensable party in cases involving just compensation for lands taken under the Agrarian Reform Program, with a right to appeal decisions in such cases that are unfavorable to it. Having only exercised its right to appeal in this case, LBP cannot be penalized by making it pay for interest.

The Third Division justified its deletion of the award of interest thuswise:

> **AFC and HPI now blame LBP for allegedly incurring delay in the determination and payment of just compensation. However, the same is without basis as AFC and HPI's proper recourse after rejecting the initial valuations of respondent LBP was to bring the matter to the RTC acting as a SAC, and not to file two complaints for determination of just**

**compensation with the DAR, which was just circuitous as it had already determined the just compensation of the subject properties taken with the aid of LBP.**

In *Land Bank of the Philippines v. Wycoco*, citing *Reyes v. National Housing Authority* and *Republic v. Court of Appeals*, this Court held that the interest of 12% *per annum* on the just compensation is due the landowner in case of delay in payment, which will in effect make the obligation on the part of the government one of forbearance. **On the other hand, interest in the form of damages cannot be applied, where there was prompt and valid payment of just compensation**. Thus:

> The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, it being fixed at the time of the actual taking by the government. **Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court.** In fine, between the taking of the property and the actual payment, legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.
>
> xxx This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% *per annum* should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time. Article 1250 of the Civil Code, providing that, in case of extraordinary inflation or deflation, the value of the currency at the time of the establishment of the obligation shall be the basis for the payment when no agreement to the contrary is stipulated, has strict application only to contractual obligations. In other words, a contractual agreement is needed for the effects

> of extraordinary inflation to be taken into account to alter the value of the currency.
>
> **It is explicit from *LBP v. Wycoco* that interest on the just compensation is imposed only in case of delay in the payment thereof which must be sufficiently established. Given the foregoing, we find that the imposition of interest on the award of just compensation is not justified and should therefore be deleted**.
>
> It must be emphasized that "pertinent amounts were deposited in favor of AFC and HPI within fourteen months after the filing by the latter of the Complaint for determination of just compensation before the RTC". It is likewise true that AFC and HPI already collected ₱149.6 and ₱262 million, respectively, representing just compensation for the subject properties. Clearly, there is no unreasonable delay in the payment of just compensation which should warrant the award of 12% interest per annum in AFC and HPI's favor.

The foregoing justification remains correct, and is reiterated herein.[2]

As far as I am concerned, nothing in the *motion for reconsideration* effectively refutes the aforequoted ratiocination rendered in the resolution of December 4, 2009. With LBP not being guilty of delay in paying to the petitioners their just compensation, any plea of suffering substantial injustice from the denial of interest should be justifiably rejected.

Lastly, I cannot bring myself to agree that this case is impressed at all with public interest, involving as it does only a "privateclaim for interest and attorney's fees which cannot even be classified as unprecedented," which " does not qualify either as a substantial or trancendental matter, or as an issue of paramount public interest for no special or compelling circumstance was present to warrant the relaxation of the doctrine of immutability in favor of the petitioners."[3]

**ACCORDINGLY,** I vote to deny the petitioners' *motion for reconsideration* and to uphold the resolution dated December 4, 2009.

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[2] *Id.*, pp. 1440-1446; all underscorings are part of the original text.

[3] *Id*., p. 1439.

**EN BANC**

[G.R. No. 174066. October 12, 2010]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **ERNESTO NARZABAL *y* CASTELO, JR.,** *accused-appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; REVISED PENAL CODE; CRIMES AND PENALTIES; CRIMES AGAINST CHASTITY; RAPE WITH HOMICIDE; ELEMENTS THAT MUST CONCUR.—** In a special complex crime of rape with homicide, the following elements must concur: (1) the accused had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the accused killed a woman.

**2. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; RAPE WITH HOMICIDE.—** Both rape and homicide must be established beyond reasonable doubt.

**3. ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE PROSECUTION CONVINCINGLY ESTABLISHED THE CRIMINAL LIABILITY OF THE ACCUSED THROUGH CIRCUMSTANTIAL EVIDENCE.—** In this case, the prosecution convincingly established the criminal liability of the accused through circumstantial evidence, which was credible and sufficient and led to the inescapable conclusion that he committed the complex crime of rape with homicide. When taken together, the circumstances point to the accused as the perpetrator of the despicable deed to the exclusion of others. These were: *First*. BBB, the mother of the victim, heard screams of her daughter coming from the direction of the house of the accused. *Second*. BBB, together with the *barangay* officials and the police went to the house of the accused where the body of the victim was found. The victim was lifeless, half-naked, without panty, and with blood between legs. *Third.* The accused, when confronted, admitted that on that fateful night AAA was in his house and that he embraced her and lowered her undergarments, indicative

of his lewd designs against her. *Fourth*. The accused admitted hitting the victim's head against the cemented floor. This move rendered her unconscious and gave him ample opportunity to satisfy his lustful desires. *Fifth*. Upon medical examination, the victim had incomplete hymenal lacerations in her genitalia.

**4. CRIMINAL LAW; REVISED PENAL CODE; CRIMES AND PENALTIES; CRIMES AGAINST CHASTITY; RAPE; THE MERE TOUCHING OF THE EXTERNAL GENITALIA BY THE PENIS, CAPABLE OF CONSUMMATING THE SEXUAL ACT, IS SUFFICIENT TO CONSTITUTE CARNAL KNOWLEDGE.—**The accused argued that there was no rape because the doctor who examined the victim's body concluded that she was still a virgin. It does not matter, however, if the victim was medically found to be a virgin; an intact hymen does not negate a finding that the victim was actually sexually violated. It has been repeatedly held that the mere touching of the external genitalia by the penis, capable of consummating the sexual act, is sufficient to constitute carnal knowledge.

**5. ID.; ID.; ID.; ID.; ID.; ID.; TO CONSTITUTE CONSUMMATED RAPE, THE TOUCHING MUST BE MADE IN THE CONTEXT OF THE PRESENCE OR EXISTENCE OF AN ERECT PENIS CAPABLE OF PENETRATION.—** In *People v. Campuhan* (385 Phil. 912), the Court clarified that the act of touching should be understood as inherently part of the entry of the penis into the *labia* of the female organ and not mere touching alone of the *mons pubis* or the *pudendum*. Stated differently, to constitute consummated rape, the touching must be made in the context of the presence or existence of an erect penis capable of penetration. There must be sufficient and convincing proof that the erect penis indeed touched the *labia* or slid into the female organ, and not merely stroked the external surface thereof.

**6. ID.; ID.; RAPE WITH HOMICIDE; PROPER PENALTY; DEATH LOWERED TO *RECLUSION PERPETUA*, WITHOUT ELIGIBILITY FOR PAROLE DUE TO EFFECTIVITY OF REPUBLIC ACT NO. 9346.—**As regards the penalty imposed, Rape with Homicide under Article 335 of the Revised Penal Code in relation to Republic Act No. 7659, provides that when by reason or on occasion of rape, homicide is committed, the penalty shall be death.

**7. ID.; ID.; ID.; ID.; ID.; ID.; ID.; LOWERED TO *RECLUSION PERPETUA*, WITHOUT ELIGIBILITY FOR PAROLE DUE TO EFFECTIVITY OF REPUBLIC ACT NO. 9346.—** However, in view of the effectivity of Republic Act No. 9346, the penalty of death should be lowered to *reclusion perpetua*, without eligibility for parole.

**8. ID.; ID.; GENERAL PROVISIONS; CIVIL LIABILITY; CIVIL INDEMNITY; MORAL DAMAGES; CASE AT BAR.—** With respect to the civil indemnity *ex delicto*, the amount of ₱100,000.00 was correctly awarded by the RTC. The award of moral damages should, however, be increased from ₱50,000.00 to ₱75,000.00 to conform to current jurisprudence.

**9. CIVIL LAW; CIVIL CODE; DAMAGES; EXEMPLARY DAMAGES; RATIONALE.—** Article 2229 of the New Civil Code permits the award of exemplary damages in order to deter commission of similar acts and allow the courts to forestall behavior that would pose grave and deleterious consequences to society.

**10. CRIMINAL LAW; REVISED PENAL CODE; GENERAL PROVISIONS; CIVIL LIABILITY; EXEMPLARY DAMAGES; CASE AT BAR.—** In this regard, the Court deems it proper to award exemplary damages in the amount of ₱50,000.00.

## APPEARANCES OF COUNSEL

*The Solicitor General* for plaintiff-appellee.
*Ramiro B. Borres, Jr.* for accused-appellant.

## D E C I S I O N

**MENDOZA, *J.:***

This appeal assails the June 30, 2006 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. H.C. CR No. 01257, which affirmed with modification the December 10, 2004 Decision[2] of the

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[1] *Rollo*, pp. 3-16. Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Regalado E. Maambong and Enrico A. Lanzanas, concurring.

[2] CA *rollo*, pp. 16-29.

Regional Trial Court, Branch 15, Tabaco City *(RTC*), convicting accused Ernesto Narzabal of the crime of Rape with Homicide in Criminal Case No. T-3772.

**THE FACTS**

On June 26, 2002, accused Ernesto Narzabal, Jr. was indicted for the special complex crime of Rape with Homicide before the RTC. The Information reads:

> That on or about the 2nd day of March 2002, at 10:00 o'clock in the evening, more or less, in Purok 2, Barangay Sta. Elena, Municipality of Malinao, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of violence, force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with AAA,[3] against her will and consent, and by reason and on the occasion thereof, accused, with intent to kill, with treachery and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously assault, attack, strangle the neck and bang the head of aforenamed AAA on the cemented floor, which caused her death, to the damage and prejudice of her legal heirs.
>
> ACTS CONTRARY TO LAW.[4]

During the trial, the prosecution presented four witnesses: (1) the victim's mother, BBB; (2) Chief *Tanod* Nestor Bonaobra; (3) Barangay Captain Wilfredo Contante; and (4) Dr. Dante Bausa, Municipal Health Officer of Malinao, Albay.

The prosecution's evidence shows that AAA, who was eighteen years old at the time, lived with her parents in Barangay Sta. Elena, Malinao, Albay.[5] Accused Ernesto Narzabal worked

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[3] See *People v. Ching*, G.R. No. 177150, November 22, 2007, 538 SCRA 117, 121. Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426).

[4] Records, p. 20.

[5] TSN, October 14, 2003, p. 13.

as a tricycle driver and lived alone as he was rumoured to be separated from his wife. The victim and her family knew the accused because their houses were only about ten (10) meters apart.[6]

On March 2, 2002, at around 8:00 o'clock in the evening, AAA asked permission from her mother, BBB, to watch a television program at the house of their neighbor, Concepcion Briones. Concepcion's house was located next to that of the accused.[7] By 10:00 o'clock in the evening, BBB noticed that AAA had not yet returned. BBB went out to fetch AAA from the house of Concepcion who, however, informed her that her daughter was not there.[8]

On her way back, BBB heard AAA scream. It was coming from the direction of the house of the accused. BBB heard AAA scream aloud twice, then a muffled cry. After that, BBB did not hear her voice again. BBB then asked for assistance from their *barangay* officials. Chief *Tanod* Nestor Bonaobra *(Bonaobra)*, Barangay Captain Wilfredo Contante *(Contante)* and Senior Police Officer 4 Jesus Castelo *(SPO4 Castelo)* responded to her plea.[9] They all proceeded to the house of the accused.

Barangay Captain Contante and SPO4 Castelo knocked on the door and inquired about the missing girl. The accused answered that he knew nothing about AAA's disappearance.[10] Suspicious, Contante, SPO4 Castelo and Bonaobra entered the house. Inside, they saw the lifeless body of AAA lying on the cemented floor, half-naked from waist down, without her panty, with blood stains between her legs, and blood oozing from her ears and nostrils.[11]

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[6] *Id.* at 4.

[7] *Id.* at 5.

[8] Records, p. 2.

[9] TSN, October 14, 2003, p. 6.

[10] Records, p. 2.

[11] TSN, October 14, 2003, p. 7

Thereafter, SPO4 Castelo brought the accused to Malinao Police Station. Meanwhile, Contante and Bonaobra brought AAA to the Ziga Memorial District Hospital, Tabaco City, where the victim was declared "dead on arrival."[12]

At the request of Police Inspector Jesus M. Resari *(P/Insp. Resari)* of PNP Malinao, Albay, Dr. Dante B. Bausa *(Dr. Bausa)*, Municipal Health Officer of Malinao, Albay, performed an autopsy on the victim's body. The Autopsy Report[13] revealed that the victim had "contusion over the inferior aspect of bilateral inner lip surface of the *labia majora* and *labia minora*; Abrasion with hyperemia over the posterior labial commissior. Superficial incomplete hymenal lacerations with hyperaemic and coaptable borders at 3:00 o'clock and 8:00 o'clock." The cause of death was cardio-respiratory arrest by reason of cerebral hemorrhage and skull fracture.

In his defense, the accused admitted the killing of AAA but denied having raped her. He related that at around 10:00 o'clock in the evening of March 2, 2002, he was drinking with friends.[14] Later, he saw AAA and asked her to buy cigarettes for him. After buying the cigarettes, they had a chat at his porch. Thereafter, he started embracing her. When he pulled down her shorts, she screamed. Rattled, he smashed her head on the floor.[15] Still in shock at what he had done, he heard people looking for her. He hid her body at the back of his house.[16] Moments later, he heard SPO4 Castelo calling for him. He allowed the police officer inside and showed him her lifeless body.[17]

On December 10, 2004, the RTC convicted the accused of the special complex crime of Rape with Homicide.[18] The

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[12] *Id.* at 8.

[13] Records, pp. 14-15.

[14] TSN, August 10, 2004, p. 7.

[15] *Id.* at 8.

[16] *Id.* at 9.

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

[18] CA *rollo*, pp. 16-29.

decretal portion of the decision reads:

> WHEREFORE, premises considered, the accused is found guilty beyond reasonable doubt of the crime of rape with homicide as defined under Article 266-A and penalized under Article 266-B of R.A. No. 8353 (Anti-Rape Law of 1997) and is hereby sentenced to suffer the indivisible penalty of Death and to pay the heirs of AAA the amounts of Php100,000.00 as civil indemnity, and Php50,000.00 as moral damages and to pay the cost.
>
> The records of this case should be forwarded to the Supreme Court for automatic review.

The RTC did not give weight to the assertion of the accused that he did not rape the victim. The autopsy report disclosed contusion and abrasion and superficial incomplete hymenal lacerations with coaptable boarders at the 3:00 o'clock and 8:00 o'clock positions. The report, coupled by Contante's affidavit stating that they found the lifeless victim "half-naked without panty with injuries on her head and blood stains in her two legs," led the RTC to conclude that the accused indeed raped the victim before killing her.[19]

The RTC did not consider the superficial incomplete hymenal laceration, the absence of spermatozoa in the vaginal smears or the finding that the victim is still a virgin to negate the allegation of rape. It held that in the crime of rape, a complete or full penetration of the victim's private part is not necessary. Mere introduction of the male organ into the *labia majora* or the victim's genitalia consummates the crime.[20]

Initially, the records of this case were forwarded to the Court for automatic review. Pursuant to the Court's ruling in *People v. Mateo*,[21] this case was remanded to the CA for intermediate review.

In his Brief,[22] the accused assigned the following errors:

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[19] *Id.* at 26-27.

[20] *Id.* at 27-28.

[21] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[22] CA *rollo*, pp. 33-37.

**THE LOWER COURT *A QUO* ERRED IN NOT CONSIDERING THE ACCUSED BEING DRUNK AT THE TIME THE CRIME COMMITTED AS AN ALTERNATIVE MITIGATING CIRCUMSTANCE.**

**THE LOWER COURT *A QUO* ERRED IN ITS FINDINGS THAT THE ACCUSED RAPED AAA.**[23]

The accused insisted that his intoxication at the time of the commission of the crime should have been considered as a mitigating circumstance as it was proven that he was a habitual drunkard. He denied having raped the victim as shown by Dr. Bausa's explanation that there was no penetration because there was no complete laceration and the victim was still a virgin.[24]

The Office of the Solicitor General *(OSG)* countered that the absence of spermatozoa did not disprove rape because the mere touching of the lips of the pudenda by the male organ was enough to consummate rape.[25] The OSG added that although the victim could no longer testify against her violator,[26] the facts and circumstantial evidence were enough to produce conviction beyond reasonable doubt.[27]

On June 30, 2006, the CA affirmed with modification the RTC decision. The dispositive portion reads:

> WHEREFORE, premises considered, the Decision of the court *a quo* dated 10 December 2004 is perforced affirmed with a modification that in addition to the civil indemnity and moral damages awarded, temperate damages of ₱30,000.00 is likewise awarded.
>
> SO ORDERED.

The CA affirmed the finding of rape against the accused, albeit the evidence being circumstantial, because the series of

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[23] *Id.* at 34.

[24] *Id.* at 34-35.

[25] *Id.* at 67.

[26] *Id.* at 69.

[27] *Id.* at 70.

unbroken events presented by the prosecution sufficiently established that he had carnal knowledge with the victim using force and intimidation before ultimately killing her. The CA wrote: "accused-appellant himself admitted that on the incident in question, he embraced the victim and pulled down the latter's shorts but when she screamed he bashed her head on the cemented floor. But according to him, that was the last act that he did to the victim because he was then in a state of shock. Far from the truth, the physical evidence would reveal a different dimension. The victim sustained nineteen (19) injuries on the head, neck and different parts of her body, and a fractured skull as a result of the bashing of her head on the cemented floor that proved fatal. And when the victim was found inside the accused's house, she was half-naked from waist down. The Autopsy Report conducted by Dr. Bausa as well as the latter's testimony showed that there was superficial incomplete hymenal lacerations."[28] The CA further stated that mere introduction of the penis into the *labia majora* of the victim's genitalia engendered the crime of rape.[29]

The CA did not appreciate the intoxication of the accused as a mitigating circumstance either because, under Article 266-B of the Revised Penal Code, the crime of rape with homicide is punishable by death. In case of an indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstance that may have attended the commission of the offense.[30]

Since actual damages were not adequately established, the CA awarded temperate damages in the amount of ₱30,000.00 because the family incurred expenses for the wake and burial of the victim.

Hence, this appeal.

Petitioner essentially reiterates the issue he presented before the CA: *whether or not the RTC erred in finding him guilty beyond reasonable doubt of the crime of rape with homicide.*

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[28] *Id.* at 90.

[29] *Id.* at 91.

[30] Article 63, Revised Penal Code.

The Court sustains the conviction.

In a special complex crime of rape with homicide, the following elements must concur: (1) the accused had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the accused killed a woman.[31] Both rape and homicide must be established beyond reasonable doubt.[32]

In this case, the prosecution convincingly established the criminal liability of the accused through circumstantial evidence, which was credible and sufficient and led to the inescapable conclusion that he committed the complex crime of rape with homicide. When taken together, the circumstances point to the accused as the perpetrator of the despicable deed to the exclusion of others. These were:

> *First*. BBB, the mother of the victim, heard screams of her daughter coming from the direction of the house of the accused.
>
> *Second*. BBB, together with the *barangay* officials and the police went to the house of the accused where the body of the victim was found . The victim was lifeless, half-naked, without panty, and with blood between legs.[33]
>
> *Third.* The accused, when confronted, admitted that on that fateful night AAA was in his house[34] and that he embraced her and lowered her undergarments, indicative of his lewd designs against her.[35]
>
> *Fourth.* The accused admitted hitting the victim's head against the cemented floor.[36] This move rendered her unconscious and gave him ample opportunity to satisfy his lustful desires.

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[31] *People v. Nanas*, 415 Phil. 683, 696 (2001).

[32] *Diega v. Court of Appeals*, G.R. Nos. 173510 and 174099, March 15, 2010.

[33] Records, Exhibit "D", p. 6.

[34] TSN, August 10, 2004, p. 7.

[35] *Id.* at 8.

[36] *Id.*

*Fifth*. Upon medical examination, the victim had incomplete hymenal lacerations in her genitalia.[37]

The accused argued that there was no rape because the doctor who examined the victim's body concluded that she was still a virgin. It does not matter, however, if the victim was medically found to be a virgin; an intact hymen does not negate a finding that the victim was actually sexually violated. It has been repeatedly held that the mere touching of the external genitalia by the penis, capable of consummating the sexual act, is sufficient to constitute carnal knowledge.[38] In *People v. Campuhan*,[39]the Court clarified that the act of touching should be understood as inherently part of the entry of the penis into the *labia* of the female organ and not mere touching alone of the *mons pubis* or the *pudendum*. Stated differently, to constitute consummated rape, the touching must be made in the context of the presence or existence of an erect penis capable of penetration. There must be sufficient and convincing proof that the erect penis indeed touched the *labia* or slid into the female organ, and not merely stroked the external surface thereof.[40]

In his testimony, Dr. Bausa positively confirmed that, upon examination of the victim, hymenal incomplete lacerations were found in her genitalia. He testified that "there was contusion over the inferior aspect of bilateral inner lip surface of the *labia majora* and *labia minora*. This injury may have been caused when an object was forcibly inserted and there was an abrasion hyperemia. The posterior junction of the two *labia majora*, posterior lid and on the part on the junction of the two majora, there was an abrasion of hyperemia and this injury can be caused forcibly when an object is forcibly inserted on the genital area and, there is also a superficial incomplete hymenal laceration of hyperaemic and coaptable borders at 3:00 o'clock

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[37] Records, Exhibit "E-3", p. 15.

[38] *People v. Brioso*, G.R. No. 182517, March 13, 2009, 581 SCRA 485, 494.

[39] 385 Phil. 912 (2000).

[40] *Supra* at 920-921.

and 8:00 o'clock corresponding to the face of the clock."[41] The physical injuries in the inner lip surface of the *labia majora* and *labia minora* of the victim's genitalia show that the requirement in *Campuhan* was satisfied.

Indubitably, the said medical finding and the testimonies of the other witnesses, who saw the victim's state at the time of the discovery, are proof sufficient enough to support a finding of rape.

As regards the penalty imposed, Rape with Homicide under Article 335 of the Revised Penal Code in relation to Republic Act No. 7659, provides that when by reason or on occasion of rape, homicide is committed, the penalty shall be death. However, in view of the effectivity of Republic Act No. 9346,[42] the penalty of death should be lowered to *reclusion perpetua*, without eligibility for parole.

With respect to the civil indemnity *ex delicto*, the amount of ₱100,000.00 was correctly awarded by the RTC.[43]The award of moral damages should, however, be increased from ₱50,000.00 to ₱75,000.00 to conform to current jurisprudence.[44] Article 2229 of the New Civil Code permits the award of exemplary damages in order to deter commission of similar acts and allow the courts to forestall behavior that would pose grave and deleterious consequences to society.[45] In this regard, the Court deems it proper to award exemplary damages in the amount of ₱50,000.00.[46]

**WHEREFORE**, the June 30, 2006 Decision of the Court of Appeals, in CA-G.R. H.C. CR No. 01257, is hereby *AFFIRMED*

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[41] TSN, November 9, 2004, pp. 15-16.

[42] "An Act Prohibiting the Imposition of the Death Penalty in the Philippines."

[43] *Supra* note 32. See also *People v. Paraiso*, 402 Phil 372, 393 (2001).

[44] *People v. Alegre*, G.R. 184812, July 06, 2010, citing *People v. Araojo*, G.R. No. 185203, September 17, 2009, 600 SCRA 295, 309.

[45] *People v. Bascugin*, G.R. No. 184704, June 30, 2009, 591 SCRA 453,465.

[46] *Id*.

*with MODIFICATION*. The penalty imposed uponaccused Ernesto Narzabal, Jr. is hereby reduced to *reclusion perpetua,* without eligibility for parole, and the amount of moral damages is increased from ₱50,000.00 to ₱75,000.00. The accused is further ordered to pay the heirs of AAA ₱50,000.00 as exemplary damages.

**SO ORDERED.**

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

*Nachura, J.,* no part.

*Carpio* and *Abad, JJ.,* on official leave.

*Peralta, J.,* on leave.

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**THIRD DIVISION**

[A.M. No. RTJ-05-1924. October 13, 2010]
(Formerly A.M. No. 04-10-568-RTC)

## RE: CASES SUBMITTED FOR DECISION BEFORE JUDGE DAMASO A. HERRERA, REGIONAL TRIAL COURT, BRANCH 24, BIÑAN, LAGUNA

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER LOWER COURTS; ADMINISTRATIVE CHARGE AGAINST LOWER COURT PERSONNEL; WITHOLDING OF A CERTAIN AMOUNT FROM RETIREMENT BENEFITS SUBJECT TO OUTCOME OF ADMINISTRATIVE CASE; CASE AT BAR.—** It appears that on September 21, 2005,

through a resolution issued in Administrative Matter No. 12086-Ret. entitled *Re*: *Application for Optional Retirement under R.A. 910, as amended, of Judge Damaso A. Herrera, Regional Trial Court, Branch 24, Binan, Laguna*, the Court ordered the release of Judge Herrera's retirement benefits but withheld the amount of ₱40,000.00 subject to the outcome of this administrative matter.

**2. ID.; ID.; ID.; ID.; ID.; PERIOD TO DECIDE CASES; TRIAL JUDGES.—** Section 15(1), Article VIII, of the *Constitution* requires a trial judge to dispose of all cases or matters within three months from the time of their submission for decision.

**3. JUDICIAL ETHICS; JUDGES; CODE OF JUDICIAL CONDUCT; PERIOD TO DECIDE CASES; TRIAL JUDGES; ALL JUDGES ADMONISHED TO DECIDE CASES WITHIN THE REQUIRED PERIOD.—** Conformably with the constitutional prescription, Rule 3.05, Canon 3 of the *Code of Judicial Conduct* admonishes all judges to dispose of their courts' business promptly and to decide cases within the required period. Unless every trial judge earnestly, painstakingly, and faithfully complies with this mandate of efficiency, the present clogged dockets in our judicial system cannot be cleared.

**4. ID.; ID.; ID.; ID.; ID.; ID.; RATIONALE.—** In *Report on the Judicial Audit Conducted in the RTC, Br. 22, Kabacan, North Cotabato*, the Court has impressed upon trial judges the need to decide cases promptly and expeditiously to accord with the time honored precept that justice delayed is justice denied, *viz*: "Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Indeed, a judge must display that "interest in his office which stops not at the minimum of the day's labor fixed by law, and which ceases not at the expiration of official sessions, but which proceeds diligently on holidays and by artificial light and even into vacation periods. Only thus can he do his part in the great work of speeding up the administration of justice and of rehabilitating the judiciary in the estimation of the people."

**5. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SUPREME COURT; ADMINISTRATIVE SUPERVISION**

**OVER LOWER COURTS; ADMINISTRATIVE CHARGE AGAINST LOWER COURT PERSONNEL; FINDINGS OF FACT; CASE AT BAR.—** Judge Herrera was guilty of undue delay in the disposition of the cases pending him his court. Prior to his early retirement, he had not decided 49 cases already due for decision, which total did not include the four cases that Judge Herrera claimed to have by then decided and the two that had supposedly become due for decision already within the period of prohibition for him to act in view of his application for early retirement.

**6. JUDICIAL ETHICS; JUDGES; CODE OF JUDICIAL CONDUCT; PERIOD TO DECIDE CASES; TRIAL JUDGES; ALL JUDGES ADMONISHED TO DECIDE CASES WITHIN THE REQUIRED PERIOD; FAILURE TO DECIDE CASES WITH DISPATCH CONSTITUTES GROSS INEFFICIENCY AND WARRANTED THE IMPOSITION OF ADMINISTRATIVE SANCTIONS UPON HIM; CASE AT BAR.—** Judge Herrera's failure to decide his cases with dispatch constituted gross inefficiency and warranted the imposition of administrative sanctions upon him. As the Court has pointed out in *Re*: *Judicial Audit of the RTC, Br. 14, Zamboanga City, Presided over by Hon. Ernesto R. Gutierrez*: "We cannot overstress this policy on prompt disposition or resolution of cases. Delay in case disposition is a major culprit in the erosion of public faith and confidence in the judiciary and the lowering of its standards. Failure to decide cases within the reglementary period, without strong and justifiable reason, constitutes gross inefficiency warranting the imposition of administrative sanction on the defaulting judge."

**7. ID.; ID.; ID.; ID.; ID.; JUDGES CAN EASILY REQUEST THE COURT FOR EXTENSION OF TIME TO RESOLVE THEIR CASES; WITHOUT AN EXTENSION BEING GRANTED BY THE COURT, A FAILURE TO DECIDE EVEN A SINGLE CASE WITHIN THE REQUIRED PERIOD RIGHTLY CONSTITUTES GROSS INEFFICIENCY THAT MERITS ADMINISTRATIVE SANCTION.—** Judge Herrera's plea of heavy workload, lack of sufficient time, poor health, and physical impossibility could not excuse him. Such circumstances were not justifications for the delay or non-performance, given that he could have easily requested the Court for the extension of his time to resolve the cases. Our awareness of the heavy caseload of

the trial courts has often moved us to allow reasonable extensions of the time for trial judges to decide their cases. But we have to remind Judge Herrera and other trial judges that no judge can choose to prolong, on his own, the period for deciding cases beyond the period authorized by the law. Without an order of extension granted by the Court, a failure to decide even a single case within the required period rightly constitutes gross inefficiency that merits administrative sanction.

**8. ID.; ID.; ID.; ID.; ID.; ID.; THAT JUDGE HERRERA DID NOT SEEK ADDITIONAL TIME REFLECTED HIS INDIFFERENCE TO THE PRESCRIPTION TO DECIDE WITHIN THE TIME LIMITS OF THE LAW. —** Judge Herrera should have sought additional time by simply filing a request for extension if, to him, rendering a decision or resolve a matter beyond the reglementary period became unavoidable. That he did not so seek additional time reflected his indifference to the prescription to decide within the time limits of the law.

**9. ID.; ID.; ID.; ID.; ID.; ID.; WITHOUT AN EXTENSION BEING GRANTED BY THE COURT, A FAILURE TO DECIDE EVEN A SINGLE CASE WITHIN THE REQUIRED PERIOD RIGHTLY CONSTITUTES GROSS INEFFICIENCY THAT MERITS ADMINISTRATIVE SANCTION; MITIGATING CIRCUMSTANCE; CASE AT BAR. —** Thus, we choose not to consider seriously his excuses as exempting him from the due observance of the time limits of the law or as exonerating him from administrative liability. The excuses, assuming they were true, could only be treated as mitigating circumstances *vis-à-vis* the properly imposable penalty. In this regard, the fact that the more than 1,000 inherited cases added to Judge Herrera's workload can be treated as a mitigating circumstance.

**10. REMEDIAL LAW; CHARGES AGAINST JUDGES; UNDUE DELAY IN RENDERING A DECISION; CLASSIFICATION; PENALTY. —** Under Section 9(1), in relation to Section 11(B), of Rule 140 of the *Rules of Court*, as amended, undue delay in rendering a decision is a less serious charge that merits the penalty of either (*a*) suspension from office without salary and other benefits for not less than one nor more than three months; or (*b*) a fine more than ₱10,000.00 but not exceeding ₱20,000.00.

**11. ID.; ID.; ID.; ID.; ID.; IN CASE AT BAR, PENALTY METED OUT CONSIDERING MITIGATING CIRCUMSTANCE.—** Anent the penalty, the OCAd recommended a fine of ₱11,000.00. We approve of the recommendation, for his offense is equivalent to gross inefficiency, but we take into account the mitigating circumstance earlier mentioned.

**12. POLITICAL LAW; PUBLIC OFFICERS; JUDICIARY; CLERK OF COURT; PERIOD PRESCRIBED FOR SUBMISSION OF REPORTS; CASE AT BAR.—** Acting Branch Clerk of Court Orfiano, Jr.'s explanation of the late submission of the monthly reports is accepted, but he is reminded to comply faithfully with the period prescribed for the submission of the reports. He is warned that the same infraction will be dealt with more severely.

## R E S O L U T I O N

**BERSAMIN, *J.*:**

Judge Damaso A. Herrera, the former Presiding Judge of Branch 24 of the Regional Trial Court in Biñan, Laguna, filed an application for optional retirement effective April 5, 2004. The Court approved his application through the resolution issued on July 5, 2004 in Administrative Matter No. 11570-Ret.

Then Court Administrator Presbitero J. Velasco, Jr., now a Member of the Court, initiated an administrative matter for agenda dated October 1, 2004 to report on the cases submitted for decision before newly-retired Judge Herrera, citing 55 of such cases mentioned in the March 2004 monthly report of Judge Herrera's branch, some of which were already beyond the reglementary period to decide,[1] to wit:

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

| CIVIL CASE NO. | DUE DATES |
|---|---|
| B-1304 | 07-24-84 |
| B-4958 | 10-22-97 |
| B-5632 | Appealed |
| B-4010 | 10-07-02 |
| B-5926 | 01-10-02 |
| B-3827 | 12-04-02 |
| B-5075 | 06-22-02 |
| B-5801 | 09-07-02 |
| B-6087 | 06-24-04 |
| B-6448 | 06-15-04 |
| B-6449 | 06-15-04 |
| B-6450 | 06-15-04 |
| B-6465 | 06-11-04 |
| B-6115 | 12-13-02 |
| B-5215 | 02-05-01 |
| B-5761 | 02-05-03 |
| B-2738 | 02-08-03 |
| B-5056 | 03-19-03 |
| B-6139 | 05-06-03 |
| B-5489 | 06-21-03 |
| B-3082 | 09-20-03 |
| B-3181 | 10-18-03 |
| B-6287 | 09-06-03 |
| B-5411 | 10-25-03 |
| B-6334 | 10-28-03 |
| B-5316 | 11-29-03 |
| B-2974 | 12-05-03 |
| B-6377 | 12-26-03 |
| B-2035 | 12-30-03 |
| B-5763 | 01-15-04 |
| B-6041 | 01-30-04 |
| B-5651 | 02-02-04 |
| B-5321 | 02-17-04 |
| B-6032 | 03-04-04 |
| B-6381 | 03-04-04 |
| B-2648 | 04-04-04 |
| B-2939 | 04-13-04 |
| B-5893 | 04-29-04 |
| B-6244 | 06-20-03 |
| B-6432 | 03-24-04 |

| | |
|---|---|
| B-2957 | 05-23-04 |
| B-2425 | 05-09-04 |
| B-4565 | 05-26-04 |
| B-6505 | 06-29-04 |

| CRIMINAL CASE NO. | DUE DATES |
|---|---|
| 7051-B | 02-04-02 |
| 6074-B | 05-11-03 |
| 11114-B | 05-23-03 |
| 9812-B | 09-08-03 |
| 7006-B | 11-29-03 |
| 4337-B | 06-27-02 |
| 10355-B | 01-15-04 |
| 8777-B | 02-03-04 |
| 7658-B | 03-27-04 |
| 11941-B | 04-14-04 |
| 10195-B | 05-17-04 |

The report further indicated that the cases submitted for decision as reported in the December 2003 monthly report totaling 26 increased to 55 in the March 2004 monthly report due to the addition of 29 cases; that Judge Herrera failed to request the extension of his time to decide the cases; that Branch 24 did not submit the monthly reports of cases within the period required under Administrative Circular No. 4-2004; and that most of the cases submitted for decision had not been reflected in the submitted reports.

Acting on the recommendation of the Court Administrator,[2] the Court resolved to:

(a) DIRECT Judge Damaso A. Herrera to explain within ten (10) days from notice his failure to decide the subject cases;

(b) DIRECT Judge Damaso A. Herrera and Acting Clerk of Court Julian R. Orfiano, Jr. to EXPLAIN within ten (10) days from notice their failure to submit their monthly reports of cases on time and why the actual number of cases submitted for decision are not reflected in said reports and why they should

[2] *Id.,* pp. 19-20.

not be held administratively liable for the delay incurred in the submission of the monthly reports of cases.[3]

In his *explanation* dated January 21, 2005,[4] Acting Clerk of Court Orfiano, Jr. stated that he was serving as both OIC/ Acting Branch Clerk of Court and Legal Researcher; that he did not submit the monthly reports of cases on time because of: (*a*) the heavy case load that already totaled 1076 cases as of January 2003; and (*b*) the late submission by the criminal and civil docket clerks of the required data for the preparation of the monthly reports despite his constant reminders to them.

For his part, Judge Herrera submitted his *explanation* dated February 2, 2005,[5] essentially praying for the Court's kind understanding and consideration. He alleged that prior to his retirement on April 4, 2004 he had decided four of the cases included in the list of undecided cases (*i.e.*, Civil Case No. B-6287, Criminal Case No. 6074-B, Criminal Case No. 11114-B and Criminal Case No. 9812-B); and that he could not act on two other cases (*i.e.*, Criminal Case No. 11941-B and Criminal Case No. 10195-B) whose due dates for decision fell on April 14, 2004 and May 17, 2004, respectively, because of the prohibition for him to act under Supreme Court Circular No. 16 dated December 2, 1986, to wit:

4. When the specified date of retirement is reached without the applicant receiving any notice of approval or denial of his application, he shall cease working and discharging his functions, unless directed otherwise.

Denying any intention not to decide the cases or to delay the submission of the reports, Judge Herrera cited his heavy workload, lack of sufficient time, health reasons, and the physical impossibility of complying with the requirements in his *explanation*. He mentioned that his court had inherited about 1,000 cases, many of which included voluminous records and

[3] *Id.*, pp. 17-18.

[4] *Id.*, pp. 21-25.

[5] *Id.*, pp. 56-60.

some of which required the retaking of testimonies due to unavailability of the transcript of stenographic notes (TSNs). He claimed that his regular Branch Clerk of Court had been appointed an Assistant Provincial Prosecutor, leaving him to do his work without any assistance by a Branch Clerk of Court; and that the stenographers had lacked ample time to prepare the TSNs in view of his court having him and another judge assigned to assist him.

Judge Herrera contended that he had requested extensions of time to decide cases; that he had exerted earnest efforts to decide the cases; that his heavy workload and hectic court schedules had prevented him from deciding his cases within the prescribed period; that that his delay in the submission of monthly reports and the inaccuracy of the data reflected thereon were caused by his branch's heavy workload and by the fact that his Acting Branch Clerk of Court had also functioned as Legal Researcher.

In its *memorandum* dated April 21, 2005,[6] the Office of the Court Administrator (OCAd) reported on the administrative matter and recommended that: (*a*) the administrative matter be re-docketed as a regular administrative complaint against Judge Herrera for gross inefficiency; and (*b*) a fine of ₱11,000.00 be imposed upon him, to be deducted from his retirement benefits.

By his letter dated May 16, 2005,[7] Judge Herrera informed the Court that his application for early retirement had been approved effective April 4, 2004; and prayed for the release of his retirement benefits after withholding ₱40,000.00 from the total amount to which he was entitled pending the resolution of the instant administrative matter.

In a *memorandum* dated May 31, 2005,[8] the OCAd considered the letter of Judge Herrera as a motion for the early resolution of the administrative matter.

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[6] *Id.*, pp. 68-70.

[7] *Id.*, p. 74.

[8] *Id.*, p. 72.

Thus, on June 20, 2005, the Court directed the re-docketing of the case as a regular administrative matter.[9]

In another letter dated June 8, 2009,[10] Judge Herrera prayed for the early resolution of the administrative matter, and reminded that he had been retired for already five years and was already entitled to receive his monthly pension and other benefits as a retired RTC Judge. He cited his lack of income due to his not having engaged in the private practice of law since his retirement due to poor health requiring his continuous medication.

It appears that on September 21, 2005, through a resolution issued in Administrative Matter No. 12086-Ret. entitled *Re*: *Application for Optional Retirement under R.A. 910, as amended, of Judge Damaso A. Herrera, Regional Trial Court, Branch 24, Binan, Laguna*, the Court ordered the release of Judge Herrera's retirement benefits but withheld the amount of ₱40,000.00 subject to the outcome of this administrative matter.[11]

After considering the circumstances of the administrative matter concerning Judge Herrera, the Court adopts the recommendation of the OCAd embodied in its *memorandum* dated April 21, 2005.

Section 15(1), Article VIII, of the *Constitution* requires a trial judge to dispose of all cases or matters within three months from the time of their submission for decision. Conformably with the constitutional prescription, Rule 3.05, Canon 3 of the *Code of Judicial Conduct* admonishes all judges to dispose of their courts' business promptly and to decide cases within the required period. Unless every trial judge earnestly, painstakingly, and faithfully complies with this mandate of efficiency, the present clogged dockets in our judicial system cannot be cleared.[12]

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[9] *Id.*, p. 71.

[10] *Id.*, p. 80.

[11] *Id.*, p. 81.

[12] *In Re: Cases Left Undecided by Retired Judge Benjamin A. Bongolan of the RTC Br. 2, Bangued, Abra,* A.M. No. 98-12-394-RTC, October 20, 2005, 473 SCRA 428.

In *Report on the Judicial Audit Conducted in the RTC, Br. 22, Kabacan, North Cotabato,*[13] the Court has impressed upon trial judges the need to decide cases promptly and expeditiously to accord with the time honored precept that justice delayed is justice denied, *viz*:

> Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Indeed, a judge must display that "interest in his office which stops not at the minimum of the day's labor fixed by law, and which ceases not at the expiration of official sessions, but which proceeds diligently on holidays and by artificial light and even into vacation periods. Only thus can he do his part in the great work of speeding up the administration of justice and of rehabilitating the judiciary in the estimation of the people.

Judge Herrera was guilty of undue delay in the disposition of the cases pending him his court. Prior to his early retirement, he had not decided 49 cases already due for decision, which total did not include the four cases that Judge Herrera claimed to have by then decided and the two that had supposedly become due for decision already within the period of prohibition for him to act in view of his application for early retirement.

Judge Herrera's failure to decide his cases with dispatch constituted gross inefficiency and warranted the imposition of administrative sanctions upon him.[14] As the Court has pointed out in *Re*: *Judicial Audit of the RTC, Br. 14, Zamboanga City, Presided over by Hon. Ernesto R. Gutierrez*:[15]

> We cannot overstress this policy on prompt disposition or resolution of cases. Delay in case disposition is a major culprit in the erosion of public faith and confidence in the judiciary and the

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[13] A.M. No. 02-8-441-RTC, March 3, 2004, 424 SCRA 206.

[14] *In Re: Report on the Judicial and Financial Audit Conducted in the Municipal Trial Court in Cities, Koronadal City*, A.M. No. 02-9233-MTCC, April 27, 2005, 457 SCRA 356.

[15] A.M. No. RTJ-05-1950, February 13, 2006, 482 SCRA 310.

lowering of its standards. Failure to decide cases within the reglementary period, without strong and justifiable reason, constitutes gross inefficiency warranting the imposition of administrative sanction on the defaulting judge.

Judge Herrera's plea of heavy workload, lack of sufficient time, poor health, and physical impossibility could not excuse him. Such circumstances were not justifications for the delay or non-performance, given that he could have easily requested the Court for the extension of his time to resolve the cases. Our awareness of the heavy caseload of the trial courts has often moved us to allow reasonable extensions of the time for trial judges to decide their cases. But we have to remind Judge Herrera and other trial judges that no judge can choose to prolong, on his own, the period for deciding cases beyond the period authorized by the law. Without an order of extension granted by the Court, a failure to decide even a single case within the required period rightly constitutes gross inefficiency that merits administrative sanction.[16]

Judge Herrera should have sought additional time by simply filing a request for extension if, to him, rendering a decision or resolve a matter beyond the reglementary period became unavoidable. That he did not so seek additional time reflected his indifference to the prescription to decide within the time limits of the law. Thus, we choose not to consider seriously his excuses as exempting him from the due observance of the time limits of the law or as exonerating him from administrative liability. The excuses, assuming they were true, could only be treated as mitigating circumstances *vis-à-vis* the properly imposable penalty.[17] In this regard, the fact that the more than 1,000 inherited cases added to Judge Herrera's workload can be treated as a mitigating circumstance.

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[16] *Saceda v. Gestopa, Jr.*, A.M. No. MTJ-00-1303, December 13, 2001, 372 SCRA 193, 197.

[17] *Re*: *Report of Deputy Court Administrator Bernardo T. Ponferada, Re: Judicial Audit Conducted in the RTC, Branch 26, Argao, Cebu*, A.M. No. 00-4-09-SC, February 23, 2005, 452 SCRA 125, 132.

Under Section 9(1), in relation to Section 11 (B), of Rule 140 of the *Rules of Court*, as amended, undue delay in rendering a decision is a less serious charge that merits the penalty of either (*a*) suspension from office without salary and other benefits for not less than one nor more than three months; or (*b*) a fine more than ₱10,000.00 but not exceeding ₱20,000.00.

Anent the penalty, the OCAd recommended a fine of ₱11,000.00. We approve of the recommendation, for his offense is equivalent to gross inefficiency, but we take into account the mitigating circumstance earlier mentioned.

Acting Branch Clerk of Court Orfiano, Jr.'s explanation of the late submission of the monthly reports is accepted, but he is reminded to comply faithfully with the period prescribed for the submission of the reports. He is warned that the same infraction will be dealt with more severely.

**WHEREFORE,** retired Judge Damaso A. Herrera is ordered to pay a fine of ₱11,000.00 to be deducted from the amount of ₱40,000.00 withheld from his retirement benefit. The Court directs the immediate payment of the balance to him, unless lawful grounds warrant the continued retention of the balance in relation to other cases involving him.

**SO ORDERED.**

*Carpio Morales (Chairperson), Brion, Villarama, Jr.,* and *Sereno, JJ.*, concur.

**THIRD DIVISION**

[G.R. No. 157802. October 13, 2010]

**MATLING INDUSTRIAL AND COMMERCIAL CORPORATION, RICHARD K. SPENCER, CATHERINE SPENCER, AND ALEX MANCILLA,** *petitioners, vs.* **RICARDO R. COROS,** *respondent.*

**SYLLABUS**

**1. LABOR LAW AND SOCIAL WELFARE LEGISLATION; LABOR RELATIONS; OFFICER OR EMPLOYEE OF A PRIVATE EMPLOYER; ILLEGAL DISMISSAL; COGNIZABLE BY THE LABOR ARBITER.—** As a rule, the illegal dismissal of an officer or other employee of a private employer is properly cognizable by the LA. This is pursuant to Article 217 (a) 2 of the *Labor Code*, as amended, x x x which provides as follows: "Article 217. *Jurisdiction of the Labor Arbiters and the Commission.* — (a) **Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide**, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, **the following cases involving all workers, whether agricultural or non-agricultural**: 1. Unfair labor practice cases; 2. **Termination disputes;** 3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment; 4. **Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations**; 5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and 6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement. (b) **The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters**. (c) Cases arising from the interpretation or

implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements. (As amended by Section 9, Republic Act No. 6715, March 21, 1989).

**2. COMMERCIAL LAW; CORPORATION CODE; CORPORATE OFFICER; ILLEGAL DISMISSAL; CONTROVERSY OVER ILLEGAL DISMISSAL OF A CORPORATE OFFICER IS KNOWN AS AN INTRA-CORPORATE DISPUTE; DISPUTE WHICH IS COGNIZABLE BY THE SECURITIES AND EXCHANGE COMMISSION (SEC).—** Where the *complaint* for illegal dismissal concerns a corporate officer, however, the controversy falls under the jurisdiction of the Securities and Exchange Commission (SEC), because the controversy arises out of intra-corporate or partnership relations between and among stockholders, members, or associates, or between any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively; and between such corporation, partnership, or association and the State insofar as the controversy concerns their individual franchise or right to exist as such entity; or because the controversy involves the election or appointment of a director, trustee, officer, or manager of such corporation, partnership, or association. Such controversy, among others, is known as an intra-corporate dispute.

**3. ID.; ID.; ID.; ID.; ID.; ID.; TWO ELEMENTS OF INTRA-CORPORATE DISPUTE.—** In order to determine whether a dispute constitutes an intra-corporate controversy or not, the Court considers two elements instead, namely: (*a*) the status or relationship of the parties; and (*b*) the nature of the question that is the subject of their controversy.

**4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; JURISPRUDENCE REITERATING THESE ELEMENTS.—** This was our thrust in *Viray v. Court of Appeals*: "The establishment of any of the relationships mentioned above will not necessarily always confer jurisdiction over the dispute on the SEC to the exclusion of regular courts. The statement made in one case that the rule admits of no exceptions or distinctions is not that absolute. The better policy in determining which body has jurisdiction over a case would be to consider not only the status or relationship of the parties

but also the nature of the question that is the subject of their controversy. Not every conflict between a corporation and its stockholders involves corporate matters that only the SEC can resolve in the exercise of its adjudicatory or quasi-judicial powers. If, for example, a person leases an apartment owned by a corporation of which he is a stockholder, there should be no question that a complaint for his ejectment for non-payment of rentals would still come under the jurisdiction of the regular courts and not of the SEC. By the same token, if one person injures another in a vehicular accident, the complaint for damages filed by the victim will not come under the jurisdiction of the SEC simply because of the happenstance that both parties are stockholders of the same corporation. A contrary interpretation would dissipate the powers of the regular courts and distort the meaning and intent of PD No. 902-A." x x x True it is that the Court pronounced in *Tabang* as follows: "Also, an intra-corporate controversy is one which arises between a stockholder and the corporation. There is no distinction, qualification or any exemption whatsoever. The provision is broad and covers all kinds of controversies between stockholders and corporations." However, the *Tabang* pronouncement is not controlling because it is too sweeping and does not accord with reason, justice, and fair play. x x x In another case, *Mainland Construction Co., Inc. v. Movilla* (250 SCRA 290, 294-295), the Court reiterated these determinants thuswise: "In order that the SEC (now the regular courts) can take cognizance of a case, the controversy must pertain to any of the following relationships: a) between the corporation, partnership or association and the public; b) between the corporation, partnership or association and its stockholders, partners, members or officers; c) between the corporation, partnership or association and the State as far as its franchise, permit or license to operate is concerned; and d) among the stockholders, partners or associates themselves. The fact that the parties involved in the controversy are all stockholders or that the parties involved are the stockholders and the corporation does not necessarily place the dispute within the ambit of the jurisdiction of SEC. The better policy to be followed in determining jurisdiction over a case should be to consider concurrent factors such as the status or relationship of the parties or the nature of the question that is the subject of their controversy. In the absence of any one of these factors, the

SEC will not have jurisdiction. Furthermore, it does not necessarily follow that every conflict between the corporation and its stockholders would involve such corporate matters as only the SEC can resolve in the exercise of its adjudicatory or quasi-judicial powers."

**5. ID.; ID.; ID.; ID.; ID.; JURISDICTION TRANSFERRED TO APPROPRIATE REGIONAL TRIAL COURTS UPON EFFECTIVITY OF R.A. NO. 8799.—** Effective on August 8, 2000, upon the passage of Republic Act No. 8799, otherwise known as *The Securities Regulation Code*, the SEC's jurisdiction over all intra-corporate disputes was transferred to the RTC, pursuant to Section 5.2 of RA No. 8799, to wit: "5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby **transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court**: *Provided*, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. **The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code.** The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed."

**6. ID.; ID.; DISMISSAL OF CORPORATE OFFICER *VIS-À-VIS* DISMISSAL OF CORPORATE EMPLOYEE; CRITERIA FOR DETERMINING VALIDITY.—** The criteria for distinguishing between corporate officers who may be ousted from office at will, on one hand, and ordinary corporate employees who may only be terminated for just cause, on the other hand, do not depend on the nature of the services performed, but on the manner of creation of the office.

**7. ID.; ID.; CORPORATE OFFICERS, DEFINED.—** Section 25 of the *Corporation Code* provides: "Section 25. *Corporate officers, quorum*.–Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, **and such other officers as may be provided for in the by-laws.** Any two (2) or more positions may be held

concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time. The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board. Directors or trustees cannot attend or vote by proxy at board meetings."

**8. ID.; ID.; ID.; IN THE CONTEXT OF PD NO. 902-A, EXCLUSIVELY THOSE WHO ARE GIVEN THAT CHARACTER EITHER BY THE CORPORATION CODE OR BY THE CORPORATION'S BY-LAWS.—** Conformably with Section 25, a position must be expressly mentioned in the By-Laws in order to be considered as a corporate office. Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office. *Guerrea v. Lezama*, the first ruling on the matter, held that the only officers of a corporation were those given that character either by the *Corporation Code* or by the By-Laws; the rest of the corporate officers could be considered only as employees or subordinate officials. Thus, it was held in *Easycall Communications Phils., Inc. v. King:* An "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an employee occupies no office and generally is employed not by the action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee. In this case, respondent was appointed vice president for nationwide expansion by Malonzo, petitioner's general manager, not by the board of directors of petitioner. It was also Malonzo who determined the compensation package of respondent. Thus, respondent was *an employee, not a* "*corporate officer*." The CA was therefore correct in ruling that jurisdiction over the case was properly with the NLRC, not the SEC (now the RTC). This interpretation is the correct application of Section 25 of the *Corporation Code*, which plainly states that the

corporate officers are the President, Secretary, Treasurer *and* such other officers as may be provided for in the By-Laws. Accordingly, the corporate officers in the context of PD No. 902-A are exclusively those who are given that character either by the *Corporation Code* or by the corporation's By-Laws.

**9. ID.; ID.; ID.; ID.; THE SEC, THE PRIMARY AGENCY ADMINISTERING THE CORPORATION CODE, ADOPTED A SIMILAR INTERPRETATION OF SECTION 25 OF THE CORPORATION CODE.—** It is relevant to state in this connection that the SEC, the primary agency administering the *Corporation Code*, adopted a similar interpretation of Section 25 of the *Corporation Code* in its Opinion dated November 25, 1993, to wit: "Thus, pursuant to the above provision (Section 25 of the Corporation Code), **whoever are the corporate officers enumerated in the by-laws are the exclusive Officers of the corporation and the Board has no power to create other Offices without amending first the corporate By-laws. However, the Board may create appointive positions other than the positions of corporate Officers, but the persons occupying such positions are not considered as corporate officers within the meaning of Section 25 of the Corporation Code and are not empowered to exercise the functions of the corporate Officers, except those functions lawfully delegated to them. Their functions and duties are to be determined by the Board of Directors/Trustees.**"

**10. ID.; ID.; ID.; ID.; RATIONALE.—** A different interpretation can easily leave the way open for the Board of Directors to circumvent the constitutionally guaranteed security of tenure of the employee by the expedient inclusion in the By-Laws of an enabling clause on the creation of just any corporate officer position.

**11. ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE OFFICE OF VICE PRESIDENT FOR FINANCE AND ADMINISTRATION CREATED BY MATLING'S PRESIDENT PURSUANT TO BY LAW NO. V WAS AN ORDINARY, NOT A CORPORATE, OFFICE.—** Moreover, the Board of Directors of Matling could not validly delegate the power to create a *corporate* office to the President, in light of Section 25 of the *Corporation Code* requiring the Board of Directors itself to elect the corporate officers. Verily, the power to elect the *corporate* officers

was a discretionary power that the law exclusively vested in the Board of Directors, and could not be delegated to subordinate officers or agents. The office of Vice President for Finance and Administration created by Matling's President pursuant to By Law No. V was an ordinary, not a corporate, office. To emphasize, the power to create new offices and the power to appoint the officers to occupy them vested by By-Law No. V merely allowed Matling's President to create non-corporate offices to be occupied by ordinary employees of Matling. Such powers were incidental to the President's duties as the executive head of Matling to assist him in the daily operations of the business.

**12. ID.; ID.; ID.; ID.; *TABANG* AND *NACPIL* SHOULD NO LONGER BE CONTROLLING.—** The petitioners' reliance on *Tabang* is misplaced. The statement in *Tabang*, to the effect that offices not expressly mentioned in the By-Laws but were created pursuant to a By-Law enabling provision were also considered corporate offices, was plainly *obiter dictum* due to the position subject of the controversy being mentioned in the By-Laws. Thus, the Court held therein that the position was a corporate office, and that the determination of the rights and liabilities arising from the ouster from the position was an intra-corporate controversy within the SEC's jurisdiction. In *Nacpil v. Intercontinental Broadcasting Corporation*, which may be the more appropriate ruling, the position subject of the controversy was not expressly mentioned in the By-Laws, but was created pursuant to a By-Law enabling provision authorizing the Board of Directors to create other offices that the Board of Directors might see fit to create. The Court held there that the position was a corporate office, relying on the *obiter dictum* in *Tabang*. Considering that the observations earlier made herein show that the soundness of their *dicta* is not unassailable, *Tabang* and *Nacpil* should no longer be controlling.

**13. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, PETITIONERS' RELIANCE ON *PAGUIO* AND *ONGKINGKO* IS MISPLACED.—** To begin with, the reliance on *Paguio* and *Ongkingko* is misplaced. In both rulings, the complainants were undeniably corporate officers due to their positions being expressly mentioned in the By-Laws, aside from the fact that both of them had been duly elected by the respective Boards

of Directors. But the herein respondent's position of Vice President for Finance and Administration was not expressly mentioned in the By-Laws; neither was the position of Vice President for Finance and Administration created by Matling's Board of Directors. Lastly, the President, not the Board of Directors, appointed him. x x x In the respondent's case, he was supposedly at once an employee, a stockholder, and a Director of Matling. The circumstances surrounding his appointment to office must be fully considered to determine whether the dismissal constituted an intra-corporate controversy or a labor termination dispute. We must also consider whether his status as Director and stockholder had any relation at all to his appointment and subsequent dismissal as Vice President for Finance and Administration. Obviously enough, the respondent was not appointed as Vice President for Finance and Administration because of his being a stockholder or Director of Matling. He had started working for Matling on September 8, 1966, and had been employed continuously for 33 years until his termination on April 17, 2000, first as a bookkeeper, and his climb in 1987 to his last position as Vice President for Finance and Administration had been gradual but steady, as the following sequence indicates: 1966 – Bookkeeper; 1968 – Senior Accountant; 1969 – Chief Accountant; 1972 – Office Supervisor; 1973 – Assistant Treasurer; 1978 – Special Assistant for Finance; 1980 – Assistant Comptroller; 1983 – Finance and Administrative Manager; 1985 – Asst. Vice President for Finance and Administration; (and) 1987 to April 17, 2000 – Vice President for Finance and Administration. Even though he might have become a stockholder of Matling in 1992, his promotion to the position of Vice President for Finance and Administration in 1987 was by virtue of the length of quality service he had rendered as an employee of Matling. His subsequent acquisition of the status of Director/stockholder had no relation to his promotion. Besides, his status of Director/stockholder was unaffected by his dismissal from employment as Vice President for Finance and Administration.

**14. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, RESPONDENT'S CASE SIMILAR TO *PRUDENTIAL BANK AND TRUST COMPANY V. REYES*.—** In *Prudential Bank and Trust Company v. Reyes*, a case involving a lady bank manager who had risen from the ranks but was dismissed, the Court held

that her complaint for illegal dismissal was correctly brought to the NLRC, because she was deemed a regular employee of the bank. The Court observed thus: "It appears that private respondent was appointed Accounting Clerk by the Bank on July 14, 1963. From that position she rose to become supervisor. Then in 1982, she was appointed Assistant Vice-President which she occupied until her illegal dismissal on July 19, 1991. **The bank's contention that she merely holds an elective position and that in effect she is not a regular employee is belied by the nature of her work and her length of service with the Bank. x x x** As earlier stated, she rose from the ranks and has been employed with the Bank since 1963 until the termination of her employment in 1991. As Assistant Vice President of the Foreign Department of the Bank, she is tasked, among others, to collect checks drawn against overseas banks payable in foreign currency and to ensure the collection of foreign bills or checks purchased, including the signing of transmittal letters covering the same. It has been stated that "the primary standard of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. Additionally, "an employee is regular because of the nature of work and the length of service, not because of the mode or even the reason for hiring them." As Assistant Vice-President of the Foreign Department of the Bank she performs tasks integral to the operations of the bank and her length of service with the bank totaling 28 years speaks volumes of her status as a regular employee of the bank. In fine, as a regular employee, she is entitled to security of tenure; that is, her services may be terminated only for a just or authorized cause. This being in truth a case of illegal dismissal, it is no wonder then that the Bank endeavored to the very end to establish loss of trust and confidence and serious misconduct on the part of private respondent but, as will be discussed later, to no avail."

**APPEARANCES OF COUNSEL**

*Reyes & Reyes Law Offices* for petitioners.
*Antonio R. Bacalso II* for respondent.

## D E C I S I O N

**BERSAMIN, *J.*:**

This case reprises the jurisdictional conundrum of whether a complaint for illegal dismissal is cognizable by the Labor Arbiter (LA) or by the Regional Trial Court (RTC). The determination of whether the dismissed officer was a regular employee or a corporate officer unravels the conundrum. In the case of the regular employee, the LA has jurisdiction; otherwise, the RTC exercises the legal authority to adjudicate.

In this appeal *via* petition for review on *certiorari*, the petitioners challenge the decision dated September 13, 2002[1] and the resolution dated April 2, 2003,[2] both promulgated in C.A.-G.R. SP No. 65714 entitled *Matling Industrial and Commercial Corporation, et al. v. Ricardo R. Coros and National Labor Relations Commission*, whereby by the Court of Appeals (CA) sustained the ruling of the National Labor Relations Commission (NLRC) to the effect that the LA had jurisdiction because the respondent was not a corporate officer of petitioner Matling Industrial and Commercial Corporation (Matling).

### Antecedents

After his dismissal by Matling as its Vice President for Finance and Administration, the respondent filed on August 10, 2000 a *complaint* for illegal suspension and illegal dismissal against Matling and some of its corporate officers (petitioners) in the NLRC, Sub-Regional Arbitration Branch XII, Iligan City.[3]

The petitioners moved to dismiss the *complaint*,[4] raising the ground, among others, that the complaint pertained to the

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[1] *Rollo*, pp. 53-61; penned by Associate Justice Oswaldo D. Agcaoili (retired), with Associate Justice Edgardo P. Cruz (retired) and Associate Justice Amelita G. Tolentino concurring.

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

[3] *Id.*, pp. 69-70.

[4] *Id.*, pp. 71-74.

jurisdiction of the Securities and Exchange Commission (SEC) due to the controversy being intra-corporate inasmuch as the respondent was a member of Matling's Board of Directors aside from being its Vice-President for Finance and Administration prior to his termination.

The respondent opposed the petitioners' *motion to dismiss*,[5] insisting that his status as a member of Matling's Board of Directors was doubtful, considering that he had not been formally elected as such; that he did not own a single share of stock in Matling, considering that he had been made to sign in blank an undated indorsement of the certificate of stock he had been given in 1992; that Matling had taken back and retained the certificate of stock in its custody; and that even assuming that he had been a Director of Matling, he had been removed as the Vice President for Finance and Administration, not as a Director, a fact that the notice of his termination dated April 10, 2000 showed.

On October 16, 2000, the LA granted the petitioners' *motion to dismiss*,[6] ruling that the respondent was a corporate officer because he was occupying the position of Vice President for Finance and Administration and at the same time was a Member of the Board of Directors of Matling; and that, consequently, his removal was a corporate act of Matling and the controversy resulting from such removal was under the jurisdiction of the SEC, pursuant to Section 5, paragraph (c) of Presidential Decree No. 902.

**Ruling of the NLRC**

The respondent appealed to the NLRC,[7] urging that:

I

THE HONORABLE LABOR ARBITER COMMITTED GRAVE ABUSE OF DISCRETION GRANTING APPELLEE'S MOTION TO DISMISS WITHOUT GIVING THE APPELLANT AN OPPORTUNITY TO FILE HIS OPPOSITION THERETO THEREBY VIOLATING THE BASIC PRINCIPLE OF DUE PROCESS.

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[5] *Id.,* pp. 90-95.

[6] *Id.,* pp. 96-99.

[7] *Id.,* pp. 100-111.

II

THE HONORABLE LABOR ARBITER COMMITTED AN ERROR IN DISMISSING THE CASE FOR LACK OF JURISDICTION.

On March 13, 2001, the NLRC set aside the dismissal, concluding that the respondent's *complaint* for illegal dismissal was properly cognizable by the LA, not by the SEC, because he was not a corporate officer by virtue of his position in Matling, albeit high ranking and managerial, not being among the positions listed in Matling's Constitution and By-Laws.[8] The NLRC disposed thuswise:

> WHEREFORE, the Order appealed from is SET ASIDE. A new one is entered declaring and holding that the case at bench does not involve any intracorporate matter. Hence, jurisdiction to hear and act on said case is vested with the Labor Arbiter, not the SEC, considering that the position of Vice-President for Finance and Administration being held by complainant-appellant is not listed as among respondent's corporate officers.
>
> Accordingly, let the records of this case be REMANDED to the Arbitration Branch of origin in order that the Labor Arbiter below could act on the case at bench, hear both parties, receive their respective evidence and position papers fully observing the requirements of due process, and resolve the same with reasonable dispatch.
>
> SO ORDERED.

The petitioners sought reconsideration,[9] reiterating that the respondent, being a member of the Board of Directors, was a corporate officer whose removal was not within the LA's jurisdiction.

The petitioners later submitted to the NLRC in support of the *motion for reconsideration* the certified machine copies of Matling's Amended Articles of Incorporation and By Laws to prove that the President of Matling was thereby granted "full power to create new offices and appoint the officers thereto,

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[8] *Id.*, pp. 112-116.

[9] *Id.*, pp. 117-120.

and the *minutes of special meeting* held on June 7, 1999 by Matling's Board of Directors to prove that the respondent was, indeed, a Member of the Board of Directors.[10]

Nonetheless, on April 30, 2001, the NLRC denied the petitioners' *motion for reconsideration*.[11]

**Ruling of the CA**

The petitioners elevated the issue to the CA by petition for *certiorari*, docketed as C.A.-G.R. No. SP 65714, contending that the NLRC committed grave abuse of discretion amounting to lack of jurisdiction in reversing the correct decision of the LA.

In its assailed decision promulgated on September 13, 2002,[12] the CA dismissed the petition for *certiorari*, explaining:

> For a position to be considered as a corporate office, or, for that matter, for one to be considered as a corporate officer, the position must, if not listed in the by-laws, have been created by the corporation's board of directors, and the occupant thereof appointed or elected by the same board of directors or stockholders. This is the implication of the ruling in *Tabang v. National Labor Relations Commission*, which reads:
>
> > "The president, vice president, secretary and treasurer are commonly regarded as the principal or executive officers of a corporation, and modern corporation statutes usually designate them as the officers of the corporation. However, other offices are sometimes created by the charter or by-laws of a corporation, or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary.
> >
> > It has been held that an 'office' is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an 'employee' usually occupies no office and generally is employed not by action of the directors

[10] *Id.*, pp. 121-142.

[11] *Id.*, pp. 143-144.

[12] *Supra*, at note 1.

or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee."

This ruling was reiterated in the subsequent cases of *Ongkingco v. National Labor Relations Commission* and *De Rossi v. National Labor Relations Commission.*

The position of vice-president for administration and finance, which Coros used to hold in the corporation, was not created by the corporation's board of directors but only by its president or executive vice-president pursuant to the by-laws of the corporation. Moreover, Coros' appointment to said position was not made through any act of the board of directors or stockholders of the corporation. Consequently, the position to which Coros was appointed and later on removed from, is not a corporate office despite its nomenclature, but an ordinary office in the corporation.

Coros' alleged illegal dismissal therefrom is, therefore, within the jurisdiction of the labor arbiter.

WHEREFORE, the petition for *certiorari* is hereby DISMISSED.

SO ORDERED.

The CA denied the petitioners' *motion for reconsideration* on April 2, 2003.[13]

**Issue**

Thus, the petitioners are now before the Court for a review on *certiorari*, positing that the respondent was a stockholder/member of the Matling's Board of Directors as well as its Vice President for Finance and Administration; and that the CA consequently erred in holding that the LA had jurisdiction.

The decisive issue is whether the respondent was a corporate officer of Matling or not. The resolution of the issue determines whether the LA or the RTC had jurisdiction over his *complaint* for illegal dismissal.

**Ruling**

The appeal fails.

[13] *Supra,* at note 2.

**I**

**The Law on Jurisdiction in Dismissal Cases**

As a rule, the illegal dismissal of an officer or other employee of a private employer is properly cognizable by the LA. This is pursuant to Article 217 (a) 2 of the *Labor Code*, as amended, which provides as follows:

Article 217. *Jurisdiction of the Labor Arbiters and the Commission.* — (a) **Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide**, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, **the following cases involving all workers, whether agricultural or non-agricultural**:

1. Unfair labor practice cases;

2. **Termination disputes;**

3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

4. **Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;**

5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) **The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.**

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the

grievance machinery and voluntary arbitration as may be provided in said agreements. (As amended by Section 9, Republic Act No. 6715, March 21, 1989).

Where the *complaint* for illegal dismissal concerns a corporate officer, however, the controversy falls under the jurisdiction of the Securities and Exchange Commission (SEC), because the controversy arises out of intra-corporate or partnership relations between and among stockholders, members, or associates, or between any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively; and between such corporation, partnership, or association and the State insofar as the controversy concerns their individual franchise or right to exist as such entity; or because the controversy involves the election or appointment of a director, trustee, officer, or manager of such corporation, partnership, or association.[14] Such controversy, among others, is known as an intra-corporate dispute.

Effective on August 8, 2000, upon the passage of Republic Act No. 8799,[15] otherwise known as *The Securities Regulation Code*, the SEC's jurisdiction over all intra-corporate disputes was transferred to the RTC, pursuant to Section 5.2 of RA No. 8799, to wit:

> 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby **transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court**: *Provided,* that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. **The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code.** The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

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[14] Section 5 of Presidential Decree No. 902-A.

[15] President Estrada approved the law on July 19, 2000.

Considering that the respondent's *complaint* for illegal dismissal was commenced on August 10, 2000, it might come under the coverage of Section 5.2 of RA No. 8799, *supra*, should it turn out that the respondent was a corporate, not a regular, officer of Matling.

## II
## Was the Respondent's Position of Vice President for Administration and Finance a Corporate Office?

We must first resolve whether or not the respondent's position as Vice President for Finance and Administration was a corporate office. If it was, his dismissal by the Board of Directors rendered the matter an intra-corporate dispute cognizable by the RTC pursuant to RA No. 8799.

The petitioners contend that the position of Vice President for Finance and Administration was a corporate office, having been created by Matling's President pursuant to By-Law No. V, as amended,[16] to wit:

BY LAW NO. V

Officers

**The President** shall be the executive head of the corporation; shall preside over the meetings of the stockholders and directors; shall countersign all certificates, contracts and other instruments of the corporation as authorized by the Board of Directors; shall have full power to hire and discharge any or all employees of the corporation; **shall have full power to create new offices and to appoint the officers thereto as he may deem proper and necessary in the operations of the corporation and as the progress of the business and welfare of the corporation may demand**; shall make reports to the directors and stockholders and perform all such other duties and functions as are incident to his office or are properly required of him by the Board of Directors. In case of the absence or disability of the President, the Executive Vice President shall have the power to exercise his functions.

The petitioners argue that the power to create corporate offices and to appoint the individuals to assume the offices

[16] *Rollo*, p. 135.

was delegated by Matling's Board of Directors to its President through By-Law No. V, as amended; and that any office the President created, like the position of the respondent, was as valid and effective a creation as that made by the Board of Directors, making the office a corporate office. In justification, they cite *Tabang v. National Labor Relations Commission*,[17] which held that "other offices are sometimes created by the charter or by-laws of a corporation, or the board of directors may be empowered under the by-laws of a corporation to create additional officers as may be necessary."

The respondent counters that Matling's By-Laws did not list his position as Vice President for Finance and Administration as one of the corporate offices; that Matling's By-Law No. III listed only four corporate officers, namely: President, Executive Vice President, Secretary, and Treasurer; [18] that the corporate offices contemplated in the phrase "*and such other officers as may be provided for in the by-laws*" found in Section 25 of the *Corporation Code* should be clearly and expressly stated in the By-Laws; that the fact that Matling's By-Law No. III dealt with *Directors & Officers* while its By-Law No. V dealt with *Officers* proved that there was a differentiation between the officers mentioned in the two provisions, with those classified under By-Law No. V being *ordinary* or *non-corporate officers*;

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[17] G.R. No.121143, January 21, 1997, 266 SCRA 462, 467.

[18] *Rollo*, p. 134:

BY-LAW NO. III

Directors and Officers

The directors shall be elected by the stockholders at their annual meeting and shall hold their respective offices for a term of one year or until their successors are duly elected and qualified unless they shall be sooner removed as hereinafter provided; provided, however, that the foregoing provisions shall not apply to the first Board of Directors who are appointed to serve until the next annual meeting of the stockholders. Absence from two successive meetings of the Board of Directors may in the discretion of the Board terminate the membership of the director. Directors shall receive no compensation for their services except per diems as may be allowed by the stockholders.

The officers of the corporation shall be the **President, Executive Vice President, Secretary** and **Treasurer**, each of whom may hold his office

and that the officer, to be considered as a corporate officer, must be elected by the Board of Directors or the stockholders, for the President could only appoint an employee to a position pursuant to By-Law No. V.

We agree with respondent.

Section 25 of the *Corporation Code* provides:

Section 25. *Corporate officers, quorum*.—Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, **and such other officers as may be provided for in the by-laws.** Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.

Directors or trustees cannot attend or vote by proxy at board meetings.

Conformably with Section 25, a position must be expressly mentioned in the By-Laws in order to be considered as a corporate

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until his successor is elected and qualified, unless sooner removed by the Board of Directors; Provided, That for the convenience of the corporation, the office of the Secretary and Treasurer my be held by one and the same person. Officers shall be designated by the stockholders' meeting at the time they elect the members of the Board of Directors. Any vacancy occurring among the officers of the Corporation on account of removal or resignation shall be filled by a stockholders' meeting. Stockholders holding one half or more of the subscribed capital stock of the corporation may demand and compel the resignation of any officer at any time.

office. Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office. *Guerrea v. Lezama*,[19] the first ruling on the matter, held that the only officers of a corporation were those given that character either by the *Corporation Code* or by the By-Laws; the rest of the corporate officers could be considered only as employees or subordinate officials. Thus, it was held in *Easycall Communications Phils., Inc. v. King*:[20]

> An "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an employee occupies no office and generally is employed not by the action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.
>
> In this case, respondent was appointed vice president for nationwide expansion by Malonzo, petitioner's general manager, not by the board of directors of petitioner. It was also Malonzo who determined the compensation package of respondent. Thus, respondent was *an employee, not a "corporate officer."* The CA was therefore correct in ruling that jurisdiction over the case was properly with the NLRC, not the SEC (now the RTC).

This interpretation is the correct application of Section 25 of the *Corporation Code*, which plainly states that the corporate officers are the President, Secretary, Treasurer *and* such other officers as may be provided for in the By-Laws. Accordingly, the corporate officers in the context of PD No. 902-A are exclusively those who are given that character either by the *Corporation Code* or by the corporation's By-Laws.

A different interpretation can easily leave the way open for the Board of Directors to circumvent the constitutionally guaranteed security of tenure of the employee by the expedient inclusion in the By-Laws of an enabling clause on the creation of just any corporate officer position.

It is relevant to state in this connection that the SEC, the

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[19] 103 Phil. 553 (1958).

[20] G.R. No.145901, December 15, 2005, 478 SCRA 102, 110-111.

primary agency administering the *Corporation Code*, adopted a similar interpretation of Section 25 of the *Corporation Code* in its Opinion dated November 25, 1993,[21] to wit:

> Thus, pursuant to the above provision (Section 25 of the Corporation Code), **whoever are the corporate officers enumerated in the by-laws are the exclusive Officers of the corporation and the Board has no power to create other Offices without amending first the corporate By-laws. However, the Board may create appointive positions other than the positions of corporate Officers, but the persons occupying such positions are not considered as corporate officers within the meaning of Section 25 of the Corporation Code and are not empowered to exercise the functions of the corporate Officers, except those functions lawfully delegated to them. Their functions and duties are to be determined by the Board of Directors/Trustees.**

Moreover, the Board of Directors of Matling could not validly delegate the power to create a *corporate* office to the President, in light of Section 25 of the *Corporation Code* requiring the Board of Directors itself to elect the corporate officers. Verily, the power to elect the *corporate* officers was a discretionary power that the law exclusively vested in the Board of Directors, and could not be delegated to subordinate officers or agents.[22] The office of Vice President for Finance and Administration created by Matling's President pursuant to By Law No. V was an ordinary, not a corporate, office.

To emphasize, the power to create new offices and the power to appoint the officers to occupy them vested by By-Law No. V merely allowed Matling's President to create non-corporate offices to be occupied by ordinary employees of Matling. Such powers were incidental to the President's duties as the executive head of Matling to assist him in the daily operations of the business.

The petitioners' reliance on *Tabang, supra,* is misplaced. The statement in *Tabang,* to the effect that offices not expressly

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[21] SEC Folio 1960-1976, at p. 498.

[22] 2 Fletcher 377, cited in Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines*, Vol. 3, 1988 Edition, page 226.

mentioned in the By-Laws but were created pursuant to a By-Law enabling provision were also considered corporate offices, was plainly *obiter dictum* due to the position subject of the controversy being mentioned in the By-Laws. Thus, the Court held therein that the position was a corporate office, and that the determination of the rights and liabilities arising from the ouster from the position was an intra-corporate controversy within the SEC's jurisdiction.

In *Nacpil v. Intercontinental Broadcasting Corporation*,[23] which may be the more appropriate ruling, the position subject of the controversy was not expressly mentioned in the By-Laws, but was created pursuant to a By-Law enabling provision authorizing the Board of Directors to create other offices that the Board of Directors might see fit to create. The Court held there that the position was a corporate office, relying on the *obiter dictum* in *Tabang*.

Considering that the observations earlier made herein show that the soundness of their *dicta* is not unassailable, *Tabang* and *Nacpil* should no longer be controlling.

**III**
**Did Respondent's Status as Director and Stockholder Automatically Convert his Dismissal into an Intra-Corporate Dispute?**

Yet, the petitioners insist that because the respondent was a Director/stockholder of Matling, and relying on *Paguio v. National Labor Relations Commission*[24] and *Ongkingko v. National Labor Relations Commission*,[25] the NLRC had no jurisdiction over his *complaint*, considering that any case for illegal dismissal brought by a stockholder/officer against the corporation was an intra-corporate matter that must fall under the jurisdiction of the SEC conformably with the context of PD No. 902-A.

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[23] G.R. No. 144767, March 21, 2002, 379 SCRA 653.

[24] G.R. No. 116662, February 1, 1996, 253 SCRA 166.

[25] G.R. No. 119877, March 31, 1997, 270 SCRA 613.

The petitioners' insistence is bereft of basis.

To begin with, the reliance on *Paguio* and *Ongkingko* is misplaced. In both rulings, the complainants were undeniably corporate officers due to their positions being expressly mentioned in the By-Laws, aside from the fact that both of them had been duly elected by the respective Boards of Directors. But the herein respondent's position of Vice President for Finance and Administration was not expressly mentioned in the By-Laws; neither was the position of Vice President for Finance and Administration created by Matling's Board of Directors. Lastly, the President, not the Board of Directors, appointed him.

True it is that the Court pronounced in *Tabang* as follows:

> Also, an intra-corporate controversy is one which arises between a stockholder and the corporation. There is no distinction, qualification or any exemption whatsoever. The provision is broad and covers all kinds of controversies between stockholders and corporations.[26]

However, the *Tabang* pronouncement is not controlling because it is too sweeping and does not accord with reason, justice, and fair play. In order to determine whether a dispute constitutes an intra-corporate controversy or not, the Court considers two elements instead, namely: (*a*) the status or relationship of the parties; and (*b*) the nature of the question that is the subject of their controversy. This was our thrust in *Viray v. Court of Appeals*:[27]

> The establishment of any of the relationships mentioned above will not necessarily always confer jurisdiction over the dispute on the SEC to the exclusion of regular courts. The statement made in one case that the rule admits of no exceptions or distinctions is not that absolute. The better policy in determining which body has jurisdiction over a case would be to consider not only the status or relationship of the parties but also the nature of the question that is the subject of their controversy.

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[26] *Supra*, at note 16.

[27] G.R. No. 92481, November 9, 1990, 191 SCRA 308, 322-323.

Not every conflict between a corporation and its stockholders involves corporate matters that only the SEC can resolve in the exercise of its adjudicatory or quasi-judicial powers. If, for example, a person leases an apartment owned by a corporation of which he is a stockholder, there should be no question that a complaint for his ejectment for non-payment of rentals would still come under the jurisdiction of the regular courts and not of the SEC. By the same token, if one person injures another in a vehicular accident, the complaint for damages filed by the victim will not come under the jurisdiction of the SEC simply because of the happenstance that both parties are stockholders of the same corporation. A contrary interpretation would dissipate the powers of the regular courts and distort the meaning and intent of PD No. 902-A.

In another case, *Mainland Construction Co., Inc. v. Movilla*,[28] the Court reiterated these determinants thuswise:

In order that the SEC (now the regular courts) can take cognizance of a case, the controversy must pertain to any of the following relationships:

a) between the corporation, partnership or association and the public;

b) between the corporation, partnership or association and its stockholders, partners, members or officers;

c) between the corporation, partnership or association and the State as far as its franchise, permit or license to operate is concerned; and

d) among the stockholders, partners or associates themselves.

The fact that the parties involved in the controversy are all stockholders or that the parties involved are the stockholders and the corporation does not necessarily place the dispute within the ambit of the jurisdiction of SEC. The better policy to be followed in determining jurisdiction over a case should be to consider concurrent factors such as the status or relationship of the parties or the nature of the question that is the subject of their controversy. In the absence of any one of these factors, the SEC will not have jurisdiction. Furthermore, it does not necessarily follow that every conflict between the corporation and its stockholders would involve such corporate

[28] G.R. No. 118088, November 23, 1995, 250 SCRA 290, 294-295.

matters as only the SEC can resolve in the exercise of its adjudicatory or quasi-judicial powers.[29]

The criteria for distinguishing between corporate officers who may be ousted from office at will, on one hand, and ordinary corporate employees who may only be terminated for just cause, on the other hand, do not depend on the nature of the services performed, but on the manner of creation of the office. In the respondent's case, he was supposedly at once an employee, a stockholder, and a Director of Matling. The circumstances surrounding his appointment to office must be fully considered to determine whether the dismissal constituted an intra-corporate controversy or a labor termination dispute. We must also consider whether his status as Director and stockholder had any relation at all to his appointment and subsequent dismissal as Vice President for Finance and Administration.

Obviously enough, the respondent was not appointed as Vice President for Finance and Administration because of his being a stockholder or Director of Matling. He had started working for Matling on September 8, 1966, and had been employed continuously for 33 years until his termination on April 17, 2000, first as a bookkeeper, and his climb in 1987 to his last position as Vice President for Finance and Administration had been gradual but steady, as the following sequence indicates:

1966 – Bookkeeper
1968 – Senior Accountant
1969 – Chief Accountant
1972 – Office Supervisor
1973 – Assistant Treasurer
1978 – Special Assistant for Finance
1980 – Assistant Comptroller
1983 – Finance and Administrative Manager
1985 – Asst. Vice President for Finance and Administration
1987 to April 17, 2000 – Vice President for Finance and Administration

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[29] See also *Saura v. Saura, Jr.*, G.R. No. 136159, September 1, 1999, 313 SCRA 465; *Lozano v. De los Santos*, G.R. No. 125221, June 19, 1997, 274 SCRA 452.

Even though he might have become a stockholder of Matling in 1992, his promotion to the position of Vice President for Finance and Administration in 1987 was by virtue of the length of quality service he had rendered as an employee of Matling. His subsequent acquisition of the status of Director/stockholder had no relation to his promotion. Besides, his status of Director/ stockholder was unaffected by his dismissal from employment as Vice President for Finance and Administration.

In *Prudential Bank and Trust Company v. Reyes,*[30] a case involving a lady bank manager who had risen from the ranks but was dismissed, the Court held that her complaint for illegal dismissal was correctly brought to the NLRC, because she was deemed a regular employee of the bank. The Court observed thus:

> It appears that private respondent was appointed Accounting Clerk by the Bank on July 14, 1963. From that position she rose to become supervisor. Then in 1982, she was appointed Assistant Vice-President which she occupied until her illegal dismissal on July 19, 1991. **The bank's contention that she merely holds an elective position and that in effect she is not a regular employee is belied by the nature of her work and her length of service with the Bank.** As earlier stated, she rose from the ranks and has been employed with the Bank since 1963 until the termination of her employment in 1991. As Assistant Vice President of the Foreign Department of the Bank, she is tasked, among others, to collect checks drawn against overseas banks payable in foreign currency and to ensure the collection of foreign bills or checks purchased, including the signing of transmittal letters covering the same. It has been stated that "the primary standard of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. Additionally, "an employee is regular because of the nature of work and the length of service, not because of the mode or even the reason for hiring them." As Assistant Vice-President of the Foreign Department of the Bank she performs tasks integral to the operations of the bank and her length of service with the bank totaling 28 years speaks volumes of her status as a regular employee of the bank. In fine,

[30] G.R. No. 141093, February 20, 2001, 352 SCRA 316, 327.

as a regular employee, she is entitled to security of tenure; that is, her services may be terminated only for a just or authorized cause. This being in truth a case of illegal dismissal, it is no wonder then that the Bank endeavored to the very end to establish loss of trust and confidence and serious misconduct on the part of private respondent but, as will be discussed later, to no avail.

**WHEREFORE,** we deny the petition for review on *certiorari*, and affirm the decision of the Court of Appeals.

Costs of suit to be paid by the petitioners.

**SO ORDERED.**

*Carpio Morales (Chairperson), Brion, Villarama, Jr.,* and *Sereno, JJ.,* concur.

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**FIRST DIVISION**

[G.R. No. 161431. October 13, 2010]

**CALIBRE TRADERS, INC., MARIO SISON SEBASTIAN, and MINDA BLANCO SEBASTIAN,** *petitioners, vs.* **BAYER PHILIPPINES, INC.,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45; ONLY QUESTIONS OF LAW REVIEWED; EXCEPTION; CASE AT BAR.—** While only questions of law are reviewed in petitions for review on *certiorari*, the Court shall delve into the factual milieu of this case in view of the conflicting findings of facts by the trial court and the CA. The question arises whether Calibre has a cause of action against Bayerphil. The records before us though, highlight the lack of it.

**2. ID.; EVIDENCE; BAD FAITH; BURDEN OF PROOF; RESTS UPON A PARTY ALLEGING THE SAME.—** "[G]ood faith is presumed and that the burden of proving bad faith rests upon a party alleging the same."

**3. ID.; ID.; FACT IN ISSUE; BURDEN OF PROVING BAD FAITH; DUTY OF PARTY ALLEGING IT.—** "In civil cases, the law requires that the party who alleges a fact and substantially asserts the affirmative of the issue has the burden of proving it."

**4. ID.; ID.; DOCUMENTARY EVIDENCE; BAD FAITH; IN THE CASE AT BAR, WHILE THE SECOND LETTER APPEARS TO BE APPARENTLY INCONSISTENT WITH THE FIRST LETTER, BAD FAITH CANNOT BE IMMEDIATELY IMPUTED TO BAYERPHIL SINCE THE LATTER IS NOT PRECLUDED FROM MAKING PROMPT CORRECTIONS IN ITS COMPUTATIONS.—** As regards the allegations of inaction/refusal to reconcile accounts, accounts manipulation by withholding discounts/rebates, imposition of penalties, and refusal to supply goods, the records reveal that Bayerphil never ignored the request for accounts reconciliation. Bayerphil acted on Calibre's letter and sent its representatives to meet with Sebastian. It wrote a letter answering point-by-point why some demands for discounts and rebates had to be refused. Bayerphil's second letter, wherein some claims were additionally granted, was on Bayerphil's part an act of concession in its desire to be paid since Calibre remained adamant in not paying its accounts. If ever Calibre found the second letter to be apparently inconsistent with the first letter, bad faith cannot be immediately imputed to Bayerphil since the latter is not precluded from making prompt corrections in its computations.

**5. ID.; ID.; ID.; ACCOUNTS MANIPULATION; IN THE CASE AT BAR, AS THE CA HAD FOUND, THIS MATTER INVOLVES AN "HONEST DIFFERENCE IN THE COMPUTATION OF THE AMOUNT, AND/OR A VARIANCE IN OPINION AS TO THE VALIDITY OF THE CLAIMS."—** We cannot subscribe to the accusation of accounts manipulation. As the CA had found, this matter involves an "honest difference in the computation of the amount, and/or a variance in opinion as to the validity of the claims." Moreover, Bayerphil could not be blamed for disallowing some of the claimed discounts and rebates. Under

the latest dealership agreement and the volume rebate agreement executed, payment is a precondition for the discounts and rebates. Bayerphil, to minimize further losses, was justified in stopping the supply of its products when its dealer still had outstanding accounts. Lastly, Calibre did not specify during the trial the unwarranted penalties Bayerphil had allegedly imposed.

**6. ID.; ID.; ID.; DEALERSHIP AGREEMENT; IN THE CASE AT BAR, THERE WAS NO INTENTION TO DRIVE CALIBRE OUT OF BUSINESS, AS THE DISTRIBUTORSHIP/DEALERSHIP AGREEMENT WAS ON A NON-EXCLUSIVE BASIS.—** Neither do we find any abuse in Bayerphil's exercise of appointing other distributors within Calibre's area. The fact that the distributors appointed were Calibre's former customers or salesmen or their relatives does not prove any ill intention to drive Calibre out of business. Notably, the distributorship/dealership agreement was on a non-exclusive basis. Bayerphil merely accorded the same business opportunities to others to better themselves. Naturally, an increase in the number of distributors in an area will entail corresponding decline in volume sales of the individual distributors. Even then Bayerphil's assistant sales manager for internal administration Ofelia Castillo, who named during the trial the other distributors Bayerphil appointed in Pangasinan, not only acknowledged that Bayerphil's former salesmen had resigned to be dealers, but also admitted that competition is part of business risk xxx**.**

**7. CIVIL LAW; CIVIL CODE; SPECIAL CONTRACTS; DAMAGES; ACTUAL OR COMPENSATORY; IN THE CASE AT BAR, PROJECTED SUM OF ₱10 MILLION SALES CANNOT BE THE PROPER BASE IN COMPUTING ACTUAL DAMAGES.—** Incidentally, under actual or compensatory damages, indemnification comprises not only the value of the loss suffered, but likewise the profits the obligee failed to obtain. In its attempt to support this claim for compensatory damages, Calibre, based its computation of more or less a loss of ₱8 million on a 10-year sales projection. xxx To justify a grant of actual or compensatory damages, the amount of loss must be proved with a reasonable degree of certainty, based upon competent proof and the best evidence obtainable by the injured party. The projected sum of ₱10 million sales cannot thus be the proper base in computing actual damages. Calibre computed

its lost income based only on its capability to sell around ₱10 Million, not on the actual income earned in the past years to properly compute the average income/profit.

**8. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; CAUSE OF ACTION; NONE IN CASE AT BAR.—** At any rate, since Calibre had no cause of action at all against Bayerphil, there can be no basis to award it with damages.

**9. ID.; ID.; PROCEDURE IN THE REGIONAL TRIAL COURT; PLEADINGS; COMPULSORY COUNTERCLAIM, CONSTRUED.—**"A compulsory counterclaim is any claim for money or other 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 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 jurisdiction, and will be barred x x x if not set up in the answer to the complaint in the same case. Any other claim is permissive."

**10. ID.; ID.; ID.; ID.; ID.; TO DETERMINE WHETHER A COUNTERCLAIM IS COMPULSORY OR NOT.—** "[The] Court has already laid down the following tests to determine whether a counterclaim is compulsory or not, to wit: (1) Are the issues of fact or law raised by the claim and the counterclaim largely the same? (2) Would *res judicata* bar a subsequent suit on defendant's claims, absent the compulsory counterclaim rule? (3) Will substantially the same evidence support or refute plaintiff's claim as well as the defendant's counterclaim? and (4) Is there any logical relation between the claim and the counterclaim, such that the conduct of separate trials of the respective claims of the parties would entail a substantial duplication of effort and time by the parties and the court?" The fourth test is the 'compelling test of compulsoriness.'

**11. ID.; ID.; ID.; ID.; ID; ID.; IN THE CASE AT BAR, BAYERPHIL'S SUIT MAY INDEPENDENTLY PROCEED IN A SEPARATE ACTION.—** Bayerphil's suit may independently proceed in a separate action. Although the rights and obligations of the parties are anchored on the same contract, the causes of action they filed against each other are distinct and do not involve the same factual issues. We find no logical relationship between

the two actions in a way that the recovery or dismissal of plaintiff's suit will establish a foundation for the other's claim. The counterclaim for collection of money is not intertwined with or contingent on Calibre's own claim for damages, which was based on the principle of abuse of rights. Both actions involve the presentation of different pieces of evidence. Calibre's suit had to present evidence of malicious intent, while Bayerphil's objective was to prove nonpayment of purchases. The allegations highlighting bad faith are different from the transactions constituting the subject matter of the collection suit. Respondent's counterclaim was only permissive. Hence, the CA erred in ruling that Bayerphil's claim against the petitioners partakes of a compulsory counterclaim.

**12. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, BAYERPHIL HAS NEVER EVADED PAYMENT OF THE DOCKET FEES ON THE HONEST BELIEF THAT ITS COUNTERCLAIM WAS COMPULSORY.—** All along, Bayerphil has never evaded payment of the docket fees on the honest belief that its counterclaim was compulsory. It has always argued against Calibre's contention that its counterclaim was permissive ever since the latter opposed Bayerphil's motion before the RTC to implead the Sebastian spouses. Lastly, Bayerphil's belief was reinforced by Judge Claravall's October 24, 1990 Resolution when she denied Calibre's motion to strike out Bayerphil's counterclaim. xxx

**13. ID.; LIBERALITY OF RULES; EMERGING TREND IN THE RULINGS OF THIS COURT IS TO AFFORD EVERY PARTY LITIGANT THE AMPLEST OPPORTUNITY FOR THE PROPER AND JUST DETERMINATION OF HIS CAUSE.—** It cannot be gainsaid that the emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.

**14. ID.; ID.; ID.; RULES ON THE PAYMENT OF FILING FEES HAVE ALREADY BEEN RELAXED.—** Rules on the payment of filing fees have already been relaxed: xxx "1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject-matter or nature of the action. **Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of**

**the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period. 2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.** 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." It is a settled doctrine that "although the payment of the prescribed docket fees is a jurisdictional requirement, its non-payment x x x should not result in the automatic dismissal of the case provided the docket fees are paid within the applicable prescriptive period."

**15. ID.; ID.; ID.; ID.; PRESCRIPTIVE PERIOD.—** "The prescriptive period therein mentioned refers to the period within which a specific action must be filed. It means that in every case, the docket fee must be paid before the lapse of the prescriptive period. Chapter 3, Title V, Book III of the Civil Code is the principal law governing prescription of actions."

**16. ID.; CIVIL PROCEDURE; PROCEDURE IN THE REGIONAL TRIAL COURT; PLEADINGS; COMPULSORY COUNTERCLAIM; BAYERPHIL COULD HAVE BEEN ORDERED TO PAY THE REQUIRED DOCKET FEES FOR THE PERMISSIVE COUNTERCLAIM, GIVING IT REASONABLE TIME BUT IN NO CASE BEYOND THE REGLEMENTARY PERIOD.—** In accordance with the aforementioned rules on payment of docket fees, the trial court upon a determination that Bayerphil's counterclaim was permissive, should have instead ordered Bayerphil to pay the required docket fees for the permissive counterclaim, giving it reasonable time but in no case beyond the reglementary period. At the time Bayerphil filed its counter-claim against Calibre and the spouses Sebastian without having paid the docket fees up to the time the trial court rendered its Decision on December

6, 1993, Bayerphil could still be ordered to pay the docket fees since no prescription has yet set in. Besides, Bayerphil should not suffer from the dismissal of its case due to the mistake of the trial court.

**17. ID.; ID.; COURTS; JURISDICTION; RULE AS TO WHEN JURISDICTION BY ESTOPPEL APPLIES AND WHEN IT DOES NOT.—** In *Metromedia Times Corporation v. Pastorin* 503 Phil. 288, 303-304, we discussed the rule as to when jurisdiction by estoppel applies and when it does not x x x , thus: "Lack of jurisdiction over the subject matter of the suit is yet another matter. Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed (Section 2, Rule 9, Rules of Court). This defense may be interposed at any time, during appeal *(Roxas vs. Rafferty, 37 Phil. 957*) or even after final judgment (*Cruzcosa vs. Judge Concepcion, et al., 101 Phil. 146*). Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside. In *People vs. Casiano* (111 Phil. 73, 93-94), this Court, on the issue of estoppel, held: "The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction or not. If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same 'must exist as a matter of law, and may not be conferred by consent of the parties or by estoppel' (5 C.J.S., 861-863). However, if the lower court had jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position – that the lower court had jurisdiction. Here, the principle of estoppel applies. The rule that jurisdiction is conferred by law, and does not depend upon the will of the parties, has no bearing thereon."

**18. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE TRIAL COURT HAD JURISDICTION OVER THE COUNTERCLAIM.—** In this case, the trial court had jurisdiction over the counterclaim although it erroneously ordered its automatic dismissal. As already discussed, the trial court should have instead directed Bayerphil to pay the required

docket fees within a reasonable time. Even then, records show that the trial court heard the counterclaim although it again erroneously found the same to be unmeritorious. Besides, it must also be mentioned that Bayerphil was lulled into believing that its counterclaim was indeed compulsory and thus there was no need to pay docket fees by virtue of Judge Claravall's October 24, 1990 Resolution. Petitioners also actively participated in the adjudication of the counterclaim which the trial court adjudged to be unmeritorious.

**19. ID.; ID.; JUDGMENT; COUNTERCLAIM, CASE AT BAR.—** However, we are more inclined to affirm the CA's ruling anent Bayerphil's counterclaim. It held thus: "What remains to be determined now is whether or not defendant-appellant is entitled to its counterclaim. On this score, We note that plaintiff-appellee never denied that it still owes defendant-appellant for purchases it had made. Bayer had already recognized that Calibre was entitled to a volume rebate for the years 1988-1989 in the amount of ₱320,849.42 on paid purchases, and a 5% prompt payment rebate of ₱63,196.06 in view of the application of the volume rebate to Calibre's outstanding balance, or a total of ₱384,045.48, as stated in Bayer's letter dated November 10, 1989 (Exhibit "10", Record, pp. 373-375) earlier quoted. Since no evidence was presented by plaintiff-appellee to rebut the correctness of Bayer's computation, We therefore assume it to be correct. Moreover, We note that the stocks Bayer had withdrawn per plaintiff-appellee's request under Claims 10 and 11 amounting to ₱124,493.28 had been credited to plaintiff-appellee as shown by the Statement of Account (Exhibit "4", Record, pp. 366-367) which shows that Calibre's outstanding indebtedness as of December 31, 1989 was One million Two Hundred Seventy-Two Thousand, One Hundred Three Pesos and Seventeen Centavos (₱1,272,103.17) (Exhibit "4-E", p. 367). We also note that the Distributorship/ Dealership Agreement entered into by the parties provides that default in payment on any account by the DISTRIBUTOR/ DEALER when and as they fall due shall entitle BAYERPHIL to interests thereon at the then maximum lawful interest rates which in no case shall be lower than twelve per cent (12%) per annum for accounts fully secured by a mortgage on realty or fourteen per cent (14%) per annum when otherwise unsecured (Exhibit "1-F", Record, p. 328)."

**APPEARANCES OF COUNSEL**

*Puno & Puno Law Offices* for petitioners.
*Angara Abello Concepcion Regala and Cruz* for respondent.

## D E C I S I O N

**DEL CASTILLO, *J.*:**

This petition for review on *certiorari*[1] assails the July 31, 2002 Decision[2] and the December 19, 2003 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 45546, that denied petitioners' action for damages against respondent Bayer Philippines Inc. (Bayerphil) and instead granted the latter's counterclaim for ₱1,272,103.07, representing unpaid purchases of Bayerphil's products.

***Factual Antecedents***

Calibre Traders, Inc. (Calibre) was one of Bayerphil's distributors/dealers of its agricultural chemicals within the provinces of Pangasinan and Tarlac.[4] Their last distributorship agreement was effective from June 1989 to June 1991.[5] However, Bayerphil stopped delivering stocks to Calibre on July 31, 1989 after the latter failed to settle its unpaid accounts in the total amount of ₱1,751,064.56.[6]

As Bayerphil's authorized dealer, Calibre then enjoyed discounts and rebates. Subsequently, however, the parties had a disagreement as to the entitlement and computations of these

[1] *Rollo*, pp. 12-67.

[2] CA *rollo*, pp. 399-412; penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Elvi John S. Asuncion and Edgardo F. Sundiam.

[3] *Id.* at 547-548.

[4] Calibre began as a dealer for Bayerphil in 1977.

[5] Records, pp. 231-235.

[6] *Id.* at 336-367; TSN Vidal Lingad, November 28, 1991, p. 15. The last payment of Calibre was in March 1989 in the amount of ₱216,070.80.

discounts. Calibre, although aware of the deadline to pay its debts with Bayerphil, nevertheless withheld payment to compel Bayerphil to reconcile its accounts.[7]

In a letter dated August 16, 1989, Calibre requested Bayerphil for a reconciliation of accounts. It enumerated the following claims that amounted to ₱968,265.82:

1. Interest charged to our 1984-1985 Volume Rebate. These were charged to us without our acknowledgment and was under protest since your people were not serving our account during that period. This amounts to ₱60,000.00 more or less.
2. Request for retroactive application of your special rebate as per our letter dated August 29, 1988 and your reply dated September 3, 1988. The reply is not acceptable to us. This amounts to ₱33,127.26.
3. Special rebates of Machete EC and EN for CY 1988 which [were] not granted to us, [but were] given to the other distributors after we have withdrawn a sizeable quantity. This amounts to ₱68,244.30.
4. The difference between our claim dated March 31, 1989 amounting to ₱47,746.30 against your Credit Memo 11868 dated April 28, 1989 amounting to ₱21,214.85. The amount of difference is ₱26,531.47.
5. The difference between our claim dated October 31, 1988 amounting to ₱23,342.09 against your Credit Memo 11693 dated January 31, 1989 amounting to ₱21,222.48. The amount of difference is ₱2,119.61.
6. Sales Returns as per your CRR 2159 dated December 19, 1988 amounting to ₱8,047.71.
7. Special rebates of 8% for Machete 5G as per Invoice No. 834159 dated February 14, 1989. This amounts to [₱1,376.80].
8. Request for Sales returns due to overdelivery as per our letter dated April 3, 1989 amounting to ₱147,108.86.
9. Request for Sales returns due to leakage as per our letter dated April 3, 1989 amounting to ₱8,681.24.

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[7] TSN Mario Sebastian, July 31, 1991, pp. 21-22.

10. 1988-1989 Volume Rebate amounting to ₱520,548.41.

11. 5% Prompt Payment on ₱1,839,603.15 amounting to ₱92,480.16 since your Sales Representative was not servicing our account due to his [forth]coming resignation.[8]

Calibre sent follow-up letters dated September 17, October 13, and November 16, 1989.[9]

On September 29, 1989, Bayerphil's credit and collection officer, Leon Abesamis, conferred with Calibre's General Manager Mario Sebastian (Sebastian). The attempt to settle failed. Again, on October 27, 1989, Bayerphils' Sales Manager of the Agro Division, Vidal Lingan, met with Sebastian. The results of their discussion were put in writing in Bayerphil's letter dated November 10, 1989, to wit:

x x x x x x x x x

Gentlemen:

Following our October 27, 1989 discussions with yourself for the final resolution of your overdue accounts with our company in the amount of exactly ₱1,718,822.57, we have arrived at a final arrangement which will no doubt be more than fair specially for your firm.

We will now go by your claims per your letter of August 16, 1989[. We] now confirm the following:

1. The alleged interest charges of ₱60,000.00 x x x for unpaid invoices against your volume rebate for the year 1984-1985 was not charged at all. Our records show that we granted your year-end rebate per our

| | |
|---|---|
| Credit Note #9089 of July 1985 | ₱ 973,511.56 |
| and | |
| Credit Note #9149 of September 1985 | 181,441.15 |
| Total rebate from retention scheme 1984-1985 | ₱ 1,154,952.71 |

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[8] Records, pp. 241-242.

[9] *Id.* at 243, 245, and 247.

These credit notes do not bear any interest charges as you claimed during that discussion. It means you were not charged any penalty on delayed payments of subject invoices.

2. Retroactive application against inventory of special deal rebates have never been paid to any of our distributors nationwide since we began business operations in this country. As a matter of policy, we regret that we cannot grant this request.

3. Special rebates on Machete EN and Machete EC on the basis of 30-day COD arrangement were granted during the last quarter of 1988. This agreement did not apply to your purchases on the same products from January 1, 1988 to September 30, 1988. We found your claim difficult to accept.

4. Your claim for ₱26,531.47 from our 30-day COD terms with 5% rebate on selected products only, *i.e.*, Gusathion, Folidol, Machete EC & EN. You have, in your claim included other products than those listed. Inasmuch as our former Sales Representative agreed to the inclusion of the other [products], we will grant that claim for ₱26,531.47 net of our earlier issued CM #11868, as an honorable business organization is expected to act.

5. Your claim on the difference of ₱2,119.61 [as stated in] your letter of October 31, 1988 in the amount of ₱23,342.09 and our Credit Note #11693 dated January 31, 1989, is granted. Our computations are absolutely correct but we shall not argue over a trivial figure.

6. Your claims on returned stocks on December 19, 1988 per CRR No. 2159 for ₱8,047.71. We issued the corresponding credit note dated July 25, 1989 in the amount of ₱7,242.26, which is based on the prices of the returned goods at the time you acquired them, not at the time when you returned them when there was a corresponding increase in prices. The difference is ₱805.45. Any business house will reluctantly consider this claim but we thought we should gallantly grant you that oversight. We are sure you did not intend to do that.

7. Special 8% rebates on Machete 5G in the amount of ₱1,376.80. We have given you a Credit Note #12160 to offset that claim.

8. Your volume rebate claim for the year 1988-1989 is in the sum of ₱520,548.41, however, our computation stands at ₱479,326.49. Enclosed herewith please find our CM#12250 in the amount of ₱320,849.42 representing your volume rebate for 1988-1989 on the paid portion of your volume rebate year purchases. As soon as payment is received on your balance of ₱1,042,248.16 (net of additional volume rebate of ₱158,477.07 on the unpaid portion and prompt payment rebate of ₱63,196.06), we shall issue you the aforementioned additional volume rebate and prompt payment rebate CMs.

9. Your claim of 5% prompt payment rebate per your note dated June 30, 1989 has been computed to amount to ₱63,196.06 in view of the returns and application of your volume rebate against the total outstanding unpaid balances.

10. Your intention to return stocks per your letter of April 3, 1989. We have withdrawn the following products on October 28, 1989, as follows:

| | | | |
|---|---|---|---|
| Basagran | 250 ml. | - | 230 bottles |
| | 500 ml. | - | 102 bottles |
| Baycarb | 1000 ml. | - | 64 " |
| Baythroid | 100 ml. | - | 373 " |
| | 250 ml. | - | 336 " |
| Gusacarb | 500 ml. | - | 20 " |
| Roundup | 250 ml. | - | 30 " |
| Machete EC | 500 ml. | - | 12 " |
| | 1000 ml. | - | 12 " |

The net value of the above materials has been computed at ₱124,493.28, [for which]a credit note will be issued shortly.

We believe that we have been more than fair in meeting your claims. We granted your requests as a gesture of benevolence in assisting your firm in softening the burdens as inevitable consequences of business difficulties.

And as the time tested physical law rightly states – for every action, there must be an equal positive reaction. We feel that you now react favorably in the final and complete resolution of your main problem.

Yours faithfully,

BAYER PHILIPPINES, INC.[10]

Bayerphil's Assistant Sales Manager Rene Garcia (Garcia) gave this letter to Sebastian[11] on November 17, and offered to grant Calibre's claims just so that it may finally settle all its unpaid accounts with Bayerphil. Sebastian wrote Bayerphil to confirm Garcia's offer.[12] In reply, Bayerphil specified in its November 24, 1989 letter the additional claims it granted and clarified the other claims:

x x x

[Gentlemen]:

We have your letter of November 22, 1989 with your request that we confirm or deny the verbal offer of our Mr. Renato G. Garcia granting all your claims with us per your letter of August 16, 1989.

Please be informed that we confirm that offer subject to the conditions hereunder made explicit, to wit:

1. We will grant you a credit note for ₱33,127.26 referring to your Item #2 in your letter dated August 16, 1989.
2. We will also grant you a credit note for ₱68,244.30 referring to your Item #3 in your above-named letter.
3. We will likewise grant the amount of ₱6,572.29 by CM to cover your Item #4 in your above-named letter. We have excluded the free goods portion in your claim.
4. We will further grant the sum of ₱2,119.61 by CM as claimed in Item #5 of your above-named letter.
5. We will also grant ₱805.45 through a CM to complete our CM #4975 as per your Item #6 in your said letter.
6. Items 7, 8 & 9 in your letter has [sic] been earlier granted by our CM Nos. 12160 and 5263.

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[10] *Id.* at 248-250.

[11] *Id.* at 376.

[12] *Id.* at 377.

7. We will also grant your additional volume rebate amounting to ₱147,590.03 (see also CM#12250 – ₱320,849.42 VR earlier granted upon full payment of the hereunder mentioned net payable to us).

8. Lastly, we will grant you under Item #11 of your August 16 letter, the sum of ₱79,557.21 (credited free goods and volume rebate which shall be applied against outstanding account are excluded).

All the foregoing are premised on our receipt of your full payment of the sum of ₱934,086.92, in full and total settlement of your outstanding account after the crediting of the eight (8) above-named concessions totaling to ₱338,016.15.

We strongly urge you to accept and adhere to the foregoing offer by remitting to us the said sum of ₱934,086.92 through a bank demand draft on or before close of business hours of December 8, 1989. Your failure to remit the said demand draft within the allotted time shall effectively cancel our herein offer, and much to our regret we shall be left with no other recourse but to protect our interests by and through an appropriately more drastic legal action.

Yours faithfully,

BAYER PHILIPPINES, INC.[13]

In his December 8, 1989 letter, Sebastian expressed discontent in Bayerphil's refusal to credit his claims in full and underscored the alleged inaction of Bayerphil in reconciling Calibre's accounts.[14]

This was followed by a demand letter requiring Bayerphil to pay the sum of ₱10,000,000.00 for the damages it had allegedly caused to Calibre.[15] Bayerphil replied, reminding that Calibre owed it ₱1,272,103.07 as of December 31, 1989.[16]

Accusing Bayerphil of maliciously breaching the distributorship agreement by manipulating Calibre's accounts,

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[13] *Id.* at 378-379.

[14] *Id.* at 380-381.

[15] *Id.* at 382. Dated January 15, 1990.

[16] *Id.* at 383. Dated March 22, 1990.

withholding discounts and rebates due it, charging unwarranted penalties, refusing to supply goods, and favoring the new distributors/dealers to drive it out of business, Calibre, on March 14, 1990, filed a suit for damages, docketed as Civil Case No. 59258, before the Regional Trial Court (RTC) of Pasig.[17] Calibre prayed for ₱8,000,000.00 actual damages, representing alleged actual losses and profits;[18] ₱2,000,000.00 award as alleged damage to its goodwill and business reputation; ₱3,500,000.00 as exemplary damages; and, attorney's fees of ₱1,500,000.00.

In its Answer with Counterclaim,[19] Bayerphil denied its alleged wanton appointment of other distributors, reasoning that it could not be faulted for a difference in treatment between a paying dealer and a non-paying one. It maintained that Calibre filed the damage suit to avoid paying its overdue accounts. Considering that those purchased on credit remained unpaid, Bayerphil had to refuse to further supply Calibre with its products.

Bayerphil also averred that the dealership agreement provides that rebates and discounts would only be granted if the previous purchases had been first fully paid. It denied that it failed to reconcile Calibre's accounts since it conferred with Calibre, and even acceded to a number of deductions demanded by Calibre subject to the latter's settlement of accounts. Bayerphil thus prayed for the collection of ₱1,272,103.07, with interest of 14% per annum accruing daily and compounded monthly from the date of default (as provided in the dealership agreement); ₱1,000,000.00 exemplary damages; and, ₱200,000.00 attorney's fees and costs of suit.

Bayerphil also moved that Mario Sebastian and his wife Minda (Sebastians) be impleaded as co-defendants, considering that

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[17] Raffled off to Branch 69.

[18] Calibre's computed sales projection in 10 years from 1989. It was based on the minimum 5% profit and the capability to sell ₱10,000,000/year (thus being inducted by Bayerphil as a member of the "Multimillionaire's Club" for falling into such sales bracket for a number of years), Records, p. 259, TSN Mario Sebastian, July 31, 1991, pp. 5-7.

[19] Records, pp. 39-54.

the Sebastians bound themselves as solidary debtors under the distributorship/dealership agreement.[20]

Calibre opposed Bayerphil's motion to implead the Sebastians and moved to strike out the counterclaim, reasoning that the spouses are not parties in its suit against Bayerphil and thus are not the proper parties to the counterclaim. It stressed that the issues between the damages suit it filed and Bayerphil's counterclaim for collection of money are totally unrelated.[21]

On the other hand, Bayerphil contended that both causes of action arose from the same contract of distributorship, and that the Sebastians' inclusion is necessary for a full adjudication of Bayerphil's counterclaim to avoid duplication of suits.[22]

In its October 24, 1990 Resolution,[23] the trial court rejected Calibre's arguments and granted the motion to implead the Sebastians as co-defendants in the counterclaim. The spouses then filed their answer to Bayerphil's counterclaim,[24] adopting all the allegations and defenses of Calibre. They raised the issue that the counterclaim against them is permissive, and since Bayerphil failed to pay the required docket fees, the trial court has no jurisdiction over the counterclaim.

***Ruling of the Regional Trial Court***

On December 6, 1993, the trial court rendered judgment[25] favoring Calibre. It held that Calibre was justified in withholding payment because there was deliberate inaction/employment of dilatory tactics on the part of Bayerphil to reconcile accounts making it liable for damages for 'abuse of rights' and 'unfair competition' under Articles 19, 20, and 28 of the Civil Code.[26]

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[20] Records, pp. 36-38.

[21] *Id.* at 108-114, 125-128.

[22] *Id.* at 116-124; 132-134.

[23] *Id.* at 135-136; penned by Judge Graduacion A. Reyes-Claravall.

[24] *Id.* at 140-144; penned by Judge Willlelmo Fortun.

[25] *Id.* at 516-530.

[26] The trial court invoked the following provisions:

It opined that Bayerphil unfairly favored other dealers and deliberately refused to supply the plaintiff with its products to drive it out of business. As for Bayerphil's counterclaim, the court *a quo* adjudged that aside from being unmeritorious for lack of valid demand, the counterclaim was permissive in character. Therefore, it must be dismissed for Bayerphil's failure to pay the required docket fees. The dispositive portion of the Decision states:

> WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendant Bayer Philippines, Inc., ordering said defendant to pay to plaintiff the amounts of ₱8,000,000.00 as actual damages, plus ₱80,000.00 as attorney's fees, plus costs.
>
> The "Counter-Complaint" of defendant against the spouses Mario and Minda Sebastian is DISMISSED, for defendant's failure to pay the required docket and filing fees, considering that the counterclaim is permissive in character, and not compulsory. Defendant's counterclaim is likewise DISMISSED for lack of merit.
>
> SO ORDERED.[27]

***Ruling of the Court of Appeals***

The CA reversed the trial court's factual findings. In its July 31, 2002 Decision, the CA found no reason to award Calibre anything as it has no cause of action against Bayerphil. The CA said:

> We agree with the appellant that nothing in the evidence suggests that it deliberately and maliciously withheld approval of Calibre's claims. Indeed, the correspondences between the parties show that

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ART. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person who contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 28. Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage.

[27] Records, p. 530.

either there was an honest difference in the computation of the amount, and/or a variance in opinion as to the validity of the claims. There is abundant evidence that Bayer actually examined its records so much so that through a letter dated November 10, 1989, it gave its explanation why it was denying certain claims. Bayer sent its representatives to discuss the matter with Calibre's General Manager Mario Sebastian. Bayer exerted efforts to arrive at a compromise with Calibre, and expressed its willingness to grant several concessions to plaintiff-appellee (Exhibit "N", Record, pp. 256-257)

Parenthetically, Bayer's offer of compromise cannot be taken as an admission of liability on its part for the entire claim of appellee Calibre. In civil cases, an offer of compromise is not an admission of any liability. The compromise settlement of a claim or cause of action is not an admission that the claim is valid, but merely admits that there is a dispute, and that the amount is being paid just to buy peace. (*Servicewide Specialists, Inc. vs. Court of Appeals*, G.R. No. 117728, June 26, 1996, 257 SCRA 643) After all, it is the policy of the law to encourage compromises.

x x x x x x x x x

It must also be noted that plaintiff-appellee was not entitled to be the sole distributor within its area of coverage for Bayer. Under number 3, Part III of the latest Distributorship/Dealership Agreement (p. 231, Record) between the parties, it was stipulated that unless otherwise agreed upon, formally and in writing, plaintiff-appellee's appointment as distributor/dealer ***was to be on a non-exclusive basis. The agreement expressly reserved Bayer's right to appoint other distributors and/or dealers, in any number desired and anywhere in the appointed area.*** There is no evidence of a formal and written agreement appointing plaintiff-appellee as sole distributor in Pangasinan and Tarlac. Hence, it cannot validly claim that Bayer caused its business injury by appointing other dealers and distributors within its area.

Significantly, the Distributorship/Dealership Agreement also reserved to both parties the right to cancel the agreement at any time. Under the circumstances obtaining, Bayer was justified, in the exercise of sound business decision, to stop supplying goods to plaintiff-appellee until the latter's outstanding account had been finally settled.[28]

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[28] CA *rollo,* pp. 408-409.

Furthermore, the CA favored Bayerphil's counterclaim. It ruled that Bayerphil's counterclaim was compulsory hence it need not pay the docket and filing fees. It noted that it arose out of the same dealership agreement from which the claims of Calibre in its complaint were likewise based. Finding that Calibre never denied that it owes Bayerphil, and that the evidence of Bayerphil regarding the amount owed by Calibre was unrebutted, the CA deemed justified the award of actual damages. Hence:

> WHEREFORE, premises considered, the Decision of the lower court is hereby REVERSED and SET ASIDE and a new one is entered ordering plaintiff-appellee Calibre Traders and/or Mario Sison Sebastian and Minda Blanco Sebastian to pay defendant-appellant the amount of One Million Two Hundred Seventy-Two Thousand One Hundred Three Pesos and Seven Centavos (₱1,272,103.07) with interest thereon at the rate of 14% per annum compounded from December 31, 1989 until fully paid.
>
> Without pronouncement as to costs.
>
> SO ORDERED.[29]

In its December 19, 2003 Resolution,[30] the CA denied the motion for reconsideration.

## Issues

Based on the parties' contentions, the Court should now resolve the following issues: a) Calibre's entitlement to an award of damages; and, b) the propriety of granting relief to Bayerphil's counterclaim.

## Our Ruling

*No form of damages can be awarded to Calibre for it miserably failed to prove its right to the reliefs it sought.*

While only questions of law are reviewed in petitions for review on *certiorari*, the Court shall delve into the factual

[29] *Id.* at 411-412.

[30] *Supra* note 3.

milieu of this case in view of the conflicting findings of facts by the trial court and the CA.[31] The question arises whether Calibre has a cause of action against Bayerphil. The records before us though, highlight the lack of it.

The lower court's ruling against the latter is premised on a finding of malice or bad faith, *i.e.*, a finding of an abuse of right on Bayerphil's part in exercising inimical acts that prejudiced Calibre's business. However, we agree with the CA's conclusion that there is no adequate proof that Bayerphil was guilty of abusing its rights. "[G]ood faith is presumed and that the burden of proving bad faith rests upon a party alleging the same."[32] "In civil cases, the law requires that the party who alleges a fact and substantially asserts the affirmative of the issue has the burden of proving it."[33] This is where Calibre failed.

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[31] *Ontimare, Jr. v. Elep*, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265. The findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts;

(5) When the findings of fact are conflicting;

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the trial court;

(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

[32] *Martires v. Cokieng*, 492 Phil. 81, 90 (2005), citing *Barons Marketing Corp. v. Court of Appeals*, 349 Phil. 769, 778 (1998).

[33] *Spouses Hutchison v. Buscas*, 498 Phil. 257, 261 (2005).

As regards the allegations of inaction/refusal to reconcile accounts, accounts manipulation by withholding discounts/rebates, imposition of penalties, and refusal to supply goods, the records reveal that Bayerphil never ignored the request for accounts reconciliation. Bayerphil acted on Calibre's letter and sent its representatives to meet with Sebastian. It wrote a letter answering point-by-point why some demands for discounts and rebates had to be refused. Bayerphil's second letter, wherein some claims were additionally granted, was on Bayerphil's part an act of concession in its desire to be paid since Calibre remained adamant in not paying its accounts. If ever Calibre found the second letter to be apparently inconsistent with the first letter, bad faith cannot be immediately imputed to Bayerphil since the latter is not precluded from making prompt corrections in its computations.

We cannot subscribe to the accusation of accounts manipulation. As the CA had found, this matter involves an "honest difference in the computation of the amount, and/or a variance in opinion as to the validity of the claims." Moreover, Bayerphil could not be blamed for disallowing some of the claimed discounts and rebates. Under the latest dealership agreement and the volume rebate agreement executed, payment is a precondition for the discounts and rebates.[34] Bayerphil, to minimize further losses, was justified in stopping the supply of its products when its dealer still had outstanding accounts. Lastly, Calibre did not specify during the trial the unwarranted penalties Bayerphil had allegedly imposed.

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[34] Pertinent provisions are the following:

Under the Dealership Agreement:

DISTRIBUTOR'S/DEALER'S DISCOUNT

x x x x x x x x x

c) An additional five percent (5%) discount, hereinafter referred to as CASH DISCOUNT, based on BAYERPHIL'S then existing listed price less BASIC and TURNOVER DISCOUNTS in cases of full CASH BEFORE OR ON DELIVERY payment on purchases.

x x x x x x x x x

CREDIT LINE, TERM AND CONDITIONS THEREOF

Neither do we find any abuse in Bayerphil's exercise of appointing other distributors within Calibre's area. The fact

x x x x x x x x x

(8) BAYERPHIL agrees to grant the DISTRIBUTOR/DEALER a prompt payment rebate equivalent to three percent (3%) of the gross invoiced amount after BASIC and TURNOVER DISCOUNTS provided that the net amount of the invoice shall have been paid on or before the 30th day from and after invoice date and provided further that no other invoiced or debited accounts are then outstanding, overdue, and unpaid.

x x x x x x x x x

Under the Volume Rebate and Premium Volume Rebate Agreement:

x x x x x x x x x

I. BASIC VOLUME REBATE

| PURCHASE (BRACKET) | PERCENTAGE REBATE |
|---|---|
| ₱4,500,000.01 to ₱5,000,000.00 | Ten Percent (10%) on total paid net volume purchases |
| ₱3,750,000.01 to ₱4,500,000.00 | Eight Percent (8%) on total paid net volume purchases |
| ₱2,750,000.01 to ₱3,750,000.00 | Six Percent (6%) on total paid net volume purchases |
| P1,500,000.01 to ₱2,750,000.00 | Four Percent (4%) on total paid net volume purchases |
| up to ₱1,500,000.00 | Two Percent (2%) on total paid net volume purchases |

x x x x x x x x x

e. The percentage bracket attained shall be reckoned on total purchases regardless of the fact of payment provided that no rebate shall be allowed on any invoiced or debited purchase where the invoice and/or debit note is not fully paid.

x x x x x x x x x

g. x x x In cases where all delivered and/or invoiced purchases dated on or before June 30, 1989 shall have been earlier paid in full, BAYERPHIL guarantees to pay accrued rebates within 15 days from receipt of DISTRIBUTOR'S claim therefore. x x x

x x x x x x x x x

Debit Notes for erroneous billings or price adjustments, Delivery Notes and Invoices appertaining to the period shall not be included in the computation of the actual volume rebate unless fully paid by July 30, 1989 but ½ of said unpaid accounts shall be credited and included in the succeeding annual period for this volume rebates.

that the distributors appointed were Calibre's former customers or salesmen or their relatives does not prove any ill intention to drive Calibre out of business. Notably, the distributorship/dealership agreement was on a non-exclusive basis. Bayerphil merely accorded the same business opportunities to others to better themselves. Naturally, an increase in the number of distributors in an area will entail corresponding decline in volume sales of the individual distributors. Even then Bayerphil's assistant sales manager for internal administration Ofelia Castillo, who named during the trial the other distributors Bayerphil appointed in Pangasinan, not only acknowledged that Bayerphil's former salesmen had resigned to be dealers, but also admitted that competition is part of business risk:

Q You said in Manaoag, this Rosalyn Agricultural Supply was there as early as 1980 is that correct?
A At about.

Q But somehow, it was a distributor for only 2 or 3 years?
A Yes, shortly, unlike those dealers who have several years.

Q This Samson in Urdaneta was also short lived?
A It began in the area and operating until now.

Q Would you know when Samson began as a distributor?
A Between the period '82 and '85.

Q This San Carlos Agricultural Center owned by William.
A It is owned by Ricardo Rule. There are two operating in San Carlos.

Q There are two dealers operating in San Carlos?
A Yes, Sir.

Q How many in Urdaneta?
A Calibre and Samson. Only those two.

Q You would admit Mrs. Castillo that the Bayer Phils. Salesmen of agro chemicals are experienced in the products of Bayer Philippines?
A Having worked and dealt with Bayer chemicals, with the training they got, I suppose they get that experience.

Q And this experience would be invaluable in their distributorship?
A Valuable.

Q Very valuable?
A Very valuable.

Q And in fact, you know of many salesmen of Bayer Phils who resigned?
A Yes, sir.

Q Because the chances of getting more is there if you are an independent distributor?
A Yes, sir.

Q In fact, this is true not only in Pangasinan but all over the country, Mrs. Castillo?
A Yes, because we have mentioned one in Cotabato, in San Jose, Nueva Ecija, in Tuguegarao.

Q And from the records that you mentioned earlier on, it would seem some of them succeeded beautifully and some closed shop afterwards?
A Yes, sir.

Q It is just a matter of luck and yes, business luck?
A Yes, sir.[35]

Incidentally, under actual or compensatory damages, indemnification comprises not only the value of the loss suffered, but likewise the profits the obligee failed to obtain.[36] In its attempt to support this claim for compensatory damages, Calibre, based its computation of more or less a loss of ₱8 million on a 10-year sales projection.[37] But as could be gleaned from Sebastian's testimony, there is no solid evidence upon which this sales projection was based:

Q You prepared a projection of your total sales for another ten (10) years from 1989.
A Yes, sir.

Q In the preparation of your projection, I assume that you based it on the records of your sales of previous years?

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[35] TSN Ofelia Castillo, September 4, 1991, pp. 20-22.

[36] Civil Code, Article 2200.

[37] Records, p. 259.

A No.

Q You did not in preparing your projection of sales to determine your alleged lost profits refer at all to your previous records?
A No.

Q What then was the basis of your projection?
A The basis of my projection is, as one of the valued clients of Bayer Philippines which is a member of the World Club, we are in the bracket of 10 million per year sales.

Q So you only had capability to sell?
A Yes.

Q Have you ever sold before in the 10 million per year sales?
A Yes.

Q That is why I am asking you, you did not at all base your assumption on your prior sales record of Bayer Philippines products?
A I cannot possibly base it on the past sales. Cost of money is going up so I based it on a bracket that Bayer Philippines put us which is in the 10 million per year sales that is projected for another 10 years because we are the valued clients of Bayer.

Q You also projected your profits for the next 10 years?
A Yes, sir.

Q And you did not consider the profits from the Bayer business of the prior years in making your projection?
A Yes, sir.

Q I assume then that in determining your profits for the previous years you used the figures of the summary Exhibit O as to your sales from 1977 to 1989?
A No, sir.

Q You did not refer at all to your profits for the previous years?
A No, sir.

Q Why did you not refer to your previous profits to determine your projection of probable profits?
A We projected our projection based on our being a valued client of Bayer Philippines, and based on the contract of the minimum 5% profit.[38]

[38] TSN Mario Sebastian, July 31, 1991, pp. 5-7.

To justify a grant of actual or compensatory damages, the amount of loss must be proved with a reasonable degree of certainty, based upon competent proof and the best evidence obtainable by the injured party.[39] The projected sum of ₱10 million sales cannot thus be the proper base in computing actual damages. Calibre computed its lost income based only on its capability to sell around ₱10 Million, not on the actual income earned in the past years to properly compute the average income/ profit.

At any rate, since Calibre had no cause of action at all against Bayerphil, there can be no basis to award it with damages.

*Bayerphil's counterclaim is permissive, but the trial court should have given it the opportunity to pay the docket fees since it did not avoid paying said fees.*

"A compulsory counterclaim is any claim for money or other 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 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 jurisdiction, and will be barred x x x if not set up in the answer to the complaint in the same case. Any other claim is permissive."[40] "[The] Court has already laid down the following tests to determine whether a counterclaim is compulsory or not, to wit: (1) Are the issues of fact or law raised by the claim and the counterclaim largely the same? (2) Would *res judicata* bar a subsequent suit on defendant's claims, absent the compulsory counterclaim rule? (3) Will substantially the same evidence support or refute plaintiff's claim as well

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[39] *Philippine National Bank v. RBL Enterprises*, G.R. No. 149569, May 28, 2004, 430 SCRA 299, 309, citing *Integrated Packaging Corporation v. Court of Appeals*, 388 Phil. 835, 846 (2000).

[40] *Cruz-Agana v. Judge Santiago-Lagman*, 495 Phil. 188, 193-194 (2005), citing Rule 6, Section 7 of the Rules of Court.

as the defendant's counterclaim? and (4) Is there any logical relation between the claim and the counterclaim, such that the conduct of separate trials of the respective claims of the parties would entail a substantial duplication of effort and time by the parties and the court?"[41] The fourth test is the 'compelling test of compulsoriness.'[42]

Bayerphil's suit may independently proceed in a separate action. Although the rights and obligations of the parties are anchored on the same contract, the causes of action they filed against each other are distinct and do not involve the same factual issues. We find no logical relationship between the two actions in a way that the recovery or dismissal of plaintiff's suit will establish a foundation for the other's claim. The counterclaim for collection of money is not intertwined with or contingent on Calibre's own claim for damages, which was based on the principle of abuse of rights. Both actions involve the presentation of different pieces of evidence. Calibre's suit had to present evidence of malicious intent, while Bayerphil's objective was to prove nonpayment of purchases. The allegations highlighting bad faith are different from the transactions constituting the subject matter of the collection suit. Respondent's counterclaim was only permissive. Hence, the CA erred in ruling that Bayerphil's claim against the petitioners partakes of a compulsory counterclaim.

Be that as it may, the trial court was incorrect in dismissing Bayerphil's counterclaim for non-payment of docket fees.

All along, Bayerphil has never evaded payment of the docket fees on the honest belief that its counterclaim was compulsory. It has always argued against Calibre's contention that its counterclaim was permissive ever since the latter opposed Bayerphil's motion before the RTC to implead the Sebastian

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[41] *Sandejas v. Ignacio, Jr.*, G.R No. 155033, December 19, 2007, 541 SCRA 61, 77, citing *Tan v. Kaakbay Finance Corporation*, 452 Phil. 637, 646-647 (2003), *Intestate Estate of Dalisay v. Hon. Marasigan*, 327 Phil. 298, 301 (1996) and *Quintanilla v. Court of Appeals*, 344 Phil. 811, 819 (1997).

[42] *Alday v. FGU Insurance Corporation*, 402 Phil. 962, 972 (2001).

spouses. Lastly, Bayerphil's belief was reinforced by Judge Claravall's October 24, 1990 Resolution when she denied Calibre's motion to strike out Bayerphil's counterclaim. Thus:

> With respect to the motion to strike out the counterclaim, the Rejoinder and Reply of CALIBRE mentioned two reasons to support it. These are: 1) that the counterclaim is not against the opposing party only, and 2) that the plaintiff's claim against the defendant is totally unrelated to the latter's claim against the Sebastian spouses because they are "not the same."

**To resolve the issues abovementioned, the elements of a compulsory counterclaim are thus given:**

> **A counterclaim is compulsory and is considered barred if not set up where the following circumstances are present: 1) that it arises out of the, or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim, 2) that it does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction, and 3) that the court has jurisdiction to entertain the claim. (*Javier vs. IAC*, 171 SCRA 605)**

The provisions of Section 8, Rule 6 must necessarily be mentioned also. To wit:

> Sec. 8, Rule 6. Counterclaim or cross-claim in the answer. – The answer may contain any counterclaim or crossclaim which a party may have at the time against the opposing party or a co-defendant provided, that the court has jurisdiction to entertain the claim and can, if the presence of third parties is essential for its adjudication, acquire jurisdiction of such parties.

The rules and jurisprudence do not require that the parties to the counterclaim be the original parties only. In fact, the presence of third parties is allowed, the only provision being their capacity to be subjected under the court's jurisdiction. As regards the nature of the claims of the parties, neither is it required that they be of the same nature, only that they arise from the same transaction or occurrence.[43]

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[43] Records, p. 136. Emphasis supplied.

It cannot be gainsaid that the emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[44] Rules on the payment of filing fees have already been relaxed:

> 1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject-matter or nature of the action. **Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.**
>
> **2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.**
>
> 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.[45]

It is a settled doctrine that "although the payment of the prescribed docket fees is a jurisdictional requirement, its non-payment x x x should not result in the automatic dismissal of the case provided the docket fees are paid within the applicable prescriptive period."[46] "The prescriptive period therein mentioned

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[44] *Peñoso v. Dona*, G.R. No. 154018, April 3, 2007, 520 SCRA 232, 240.

[45] *Sun Insurance Office, Ltd. v. Judge Asuncion*, 252 Phil. 280, 291-293 (1989). Emphasis supplied.

[46] *Alday v. FGU Insurance Corporation, supra* note 42 at 975 and *Suson v. Court of Appeals*, 343 Phil. 816, 827 (1997).

refers to the period within which a specific action must be filed. It means that in every case, the docket fee must be paid before the lapse of the prescriptive period. Chapter 3, Title V, Book III of the Civil Code is the principal law governing prescription of actions."[47]

In accordance with the aforementioned rules on payment of docket fees, the trial court upon a determination that Bayerphil's counterclaim was permissive, should have instead ordered Bayerphil to pay the required docket fees for the permissive counterclaim, giving it reasonable time but in no case beyond the reglementary period.[48] At the time Bayerphil filed its counterclaim against Calibre and the spouses Sebastian without having paid the docket fees up to the time the trial court rendered its Decision on December 6, 1993, Bayerphil could still be ordered to pay the docket fees since no prescription has yet set in.[49] Besides, Bayerphil should not suffer from the dismissal of its case due to the mistake of the trial court.

Considering the foregoing discussion, we find no need to remand the case to the trial court for the resolution of Bayerphil's counterclaim. In *Metromedia Times Corporation v. Pastorin*,[50] we discussed the rule as to when jurisdiction by estoppel applies and when it does not, thus:

> Lack of jurisdiction over the subject matter of the suit is yet another matter. Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed (Section 2, Rule 9, Rules of Court). This defense may be interposed at any time, during appeal *(Roxas vs. Rafferty, 37 Phil. 957*) or even after final judgment (*Cruzcosa vs. Judge Concepcion, et al., 101 Phil. 146*). Such is

[47] *Central Bank of the Philippines v. Court of Appeals*, G.R. Nos. 88353 and 92943, May 8, 1992, 208 SCRA 652, 683.

[48] *Alday v. FGU Insurance Corporation, supra* note 42 at 976.

[49] N.B. Since Bayerphil's claim for sum of money was based on a written contract, it has 10 years to file a claim for collection of money under Art. 1144 (1) of the Civil Code from the time Calibre defaulted in its payments beginning 1989.

[50] 503 Phil. 288, 303-304 (2005), citing *Lozon v. National Labor Relations Commission*, 310 Phil. 1 (1995).

understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside. In *People vs. Casiano* (111 Phil. 73, 93-94), this Court, on the issue of estoppel, held:

> "The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction or not. If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same 'must exist as a matter of law, and may not be conferred by consent of the parties or by estoppel' (5 C.J.S., 861-863). However, if the lower court had jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position – that the lower court had jurisdiction. Here, the principle of estoppel applies. The rule that jurisdiction is conferred by law, and does not depend upon the will of the parties, has no bearing thereon."

In this case, the trial court had jurisdiction over the counterclaim although it erroneously ordered its automatic dismissal. As already discussed, the trial court should have instead directed Bayerphil to pay the required docket fees within a reasonable time. Even then, records show that the trial court heard the counterclaim although it again erroneously found the same to be unmeritorious. Besides, it must also be mentioned that Bayerphil was lulled into believing that its counterclaim was indeed compulsory and thus there was no need to pay docket fees by virtue of Judge Claravall's October 24, 1990 Resolution. Petitioners also actively participated in the adjudication of the counterclaim which the trial court adjudge to be unmeritorious.

However, we are more inclined to affirm the CA's ruling anent Bayerphil's counterclaim. It held thus:

> What remains to be determined now is whether or not defendant-appellant is entitled to its counterclaim. On this score, We note that plaintiff-appellee never denied that it still owes defendant-appellant for purchases it had made. Bayer had already recognized

that Calibre was entitled to a volume rebate for the years 1988-1989 in the amount of ₱320,849.42 on paid purchases, and a 5% prompt payment rebate of ₱63,196.06 in view of the application of the volume rebate to Calibre's outstanding balance, or a total of ₱384,045.48, as stated in Bayer's letter dated November 10, 1989 (Exhibit "10", Record, pp. 373-375) earlier quoted.

Since no evidence was presented by plaintiff-appellee to rebut the correctness of Bayer's computation. We therefore assume it to be correct. Moreover, We note that the stocks Bayer had withdrawn per plaintiff-appellee's request under Claims 10 and 11 amounting to ₱124,493.28 had been credited to plaintiff-appellee as shown by the Statement of Account (Exhibit "4", Record, pp. 366-367) which shows that Calibre's outstanding indebtedness as of December 31, 1989 was One million Two Hundred Seventy-Two Thousand, One Hundred Three Pesos and Seventeen Centavos (₱1,272,103.17) (Exhibit "4-E", p. 367). We also note that the Distributorship/ Dealership Agreement entered into by the parties provides that default in payment on any account by the DISTRIBUTOR/DEALER when and as they fall due shall entitle BAYERPHIL to interests thereon at the then maximum lawful interest rates which in no case shall be lower than twelve per cent (12%) per annum for accounts fully secured by a mortgage on realty or fourteen per cent (14%) per annum when otherwise unsecured. (Exhibit "1-F", Record, p. 328).[51]

**WHEREFORE,** the July 31, 2002 Decision of the Court of Appeals in CA-G.R. CV No. 45546 is *AFFIRMED*. Considering that the counterclaim is permissive, respondent Bayer Philippines, Inc. is *ORDERED* to pay the prescribed docket fees with the Regional Trial Court of Pasig City within fifteen (15) days from receipt of this Decision.

**SO ORDERED.**

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

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[51] *Rollo,* pp. 203-204.

**FIRST DIVISION**

[G.R. No. 170375. October 13, 2010]

**REPUBLIC OF THE PHILIPPINES,** *petitioner, vs.* **HON. MAMINDIARA P. MANGOTARA, in his capacity as Presiding Judge of the Regional Trial Court, Branch 1, Iligan City, Lanao del Norte, and MARIA CRISTINA FERTILIZER CORPORATION, and the PHILIPPINE NATIONAL BANK,** *respondents.*

[G.R. No. 170505. October 13, 2010]

**LAND TRADE REALTY CORPORATION,** *petitioner, vs.* **NATIONAL POWER CORPORATION and NATIONAL TRANSMISSION CORPORATION (TRANSCO),** *respondents.*

[G.R. Nos. 173355-56. October 13, 2010]

**NATIONAL POWER CORPORATION,** *petitioner, vs.* **HON. COURT OF APPEALS (Special Twenty-Third Division, Cagayan de Oro City), and LAND TRADE REALTY CORPORATION,** *respondents.*

[G.R. No. 173401. October 13, 2010]

**REPUBLIC OF THE PHILIPPINES,** *petitioner, vs.* **DEMETRIA CACHO, represented by alleged Heirs DEMETRIA CONFESOR VIDAL and/or TEOFILO CACHO, AZIMUTH INTERNATIONAL DEVELOPMENT CORPORATION and LAND TRADE REALTY CORPORATION,** *respondents.*

[G.R. Nos. 173563-64. October 13, 2010]

**NATIONAL TRANSMISSION CORPORATION,** *petitioner, vs.* **HON. COURT OF APPEALS (Special Twenty-Third Division, Cagayan de Oro City), and**

**LAND TRADE REALTY CORPORATION as represented by Atty. Max C. Tabimina,** *respondents.*

[G.R. No. 178779. October 13, 2010]

**LAND TRADE REALTY CORPORATION,** *petitioner, vs.* **DEMETRIA CONFESOR VIDAL and AZIMUTH INTERNATIONAL DEVELOPMENT CORPORATION,** *respondents.*

[G.R. No. 178894. October 13, 2010]

**TEOFILO CACHO and/or ATTY. GODOFREDO CABILDO,** *petitioner, vs.* **DEMETRIA CONFESOR VIDAL and AZIMUTH INTERNATIONAL DEVELOPMENT CORPORATION,** *respondents.*

**SYLLABUS**

**1. CIVIL LAW; CIVIL CODE; POSSESSION; QUIETING OF TITLE; THE MAIN ISSUE IN THE QUIETING OF TITLE CASE WAS WHO BETWEEN VIDAL AND TEOFILO HAD VALID TITLE TO THE SUBJECT PROPERTIES AS DOÑA DEMETRIA'S RIGHTFUL SURVIVING HEIR.—** In the Quieting of Title Case, the Court held: "Thus, the Court of Appeals did not err when it affirmed *in toto* the judgment of the RTC-Branch 3 which declared, among other things, that (a) Vidal is the sole surviving heir of Doña Demetria, who alone has rights to and interest in the subject parcels of land; **(b) AZIMUTH is Vidal's successor-in-interest to portions of the said properties in accordance with the 1998 Memorandum of Agreement and 2004 Deed of Conditional Conveyance**; (c) Teofilo is not the son or heir of Doña Demetria; and (d) Teofilo, Atty. Cabildo, and their transferees/assignees, including LANDTRADE, have no valid right to or interest in the same properties." Of the total land area of 38.23 hectares covered by Original Certificate of Title (OCT) Nos. 0-1200 (a.f.) and 0-1201 (a.f.), in the name of Doña Demetria Cacho (Doña Demetria), Vidal transferred her rights to and interests in a portion thereof, measuring 23 hectares, to AZIMUTH by virtue of the aforementioned 1998

Memorandum of Agreement and 2004 Deed of Conditional Conveyance. However, it should be stressed that the main issue in the Quieting of Title Case was who between Vidal and Teofilo had valid title to the subject properties as Doña Demetria's rightful surviving heir. The extent or area of the properties inherited was not put into question in said case.

**2. ID.; ID.; ID.; CANCELLATION OF TITLES AND REVERSION; SHOULD RTC, BRANCH 4, ILIGAN CITY AFFIRM THE NULLITY OF THE TWO OCTS, IN THE ORDERED-REINSTATED CASE, THEN IT CAN ORDER THE CANCELLATION OF SAID CERTIFICATES OF TITLE AND THE REVERSION TO THE REPUBLIC OF THE PARCELS OF LAND UNLAWFULLY INCLUDED THEREIN.—** Moreover, the Court also ordered in its July 7, 2010 Decision that the Cancellation of Titles and Reversion Case be reinstated before the Regional Trial Court, Branch 4 (RTC-Branch 4) of Iligan City, Lanao del Norte. It is the main contention of the Republic in said case that OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.) are null and void because they covered parcels of land beyond those granted by the land registration court to Doña Demetria in GLRO Record Nos. 6908 and 6909. Should the RTC-Branch 4 affirm the nullity of the two OCTs, then it can order the cancellation of said certificates of title and the reversion to the Republic of the parcels of land unlawfully included therein.

**3. ID.; ID.; ID.; ID.; THE RIGHTS TO AND INTERESTS OF VIDAL IN THE ENTIRE 38.23 HECTARES (WHICH WILL INCLUDE THE THE RIGHTS TO AND INTERESTS OF AZIMUTH OF A 23-HECTARE PORTION SOLD BY VIDAL TO IT) ARE DEPENDENT ON THE FINAL JUDGMENT IN THE CANCELLATION OF TITLES AND REVERSION CASE YET TO BE HEARD BY THE RTC, BRANCH 4, ILIGAN CITY.—** The Court agrees with the Republic that necessarily, the rights to and interests in the entire 38.23 hectares, covered by OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.), claimed by Vidal as the declared sole heir of Doña Demetria in the Quieting of Title Case, should be without prejudice to the outcome of the Cancellation of Titles and Reversion Case yet to be heard by the RTC-Branch 4. As Vidal's successor-in-interest to the 23 hectares of the subject properties, AZIMUTH only stepped into the former's shoes in so far as said portion is concerned. No one can acquire a right greater than what the transferor

himself has. As the saying goes, the spring cannot rise higher than its source. As a consequence, the rights to and interests in the 23-hectare portion of the subject properties, acquired by AZIMUTH under the 1998 Memorandum of Agreement and 2004 Deed of Conditional Conveyance, referred to by this Court in the Quieting of Title Case, are likewise dependent on the final judgment in the Cancellation of Titles and Reversion Case.

**4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; ONLY QUESTIONS OF LAW MAY BE RAISED; IN THE CASE AT BAR, THE REPUBLIC'S CHALLENGE OF VIDAL'S HEIRSHIP INVOLVES LEGAL AND FACTUAL MATTERS THAT NEED TO BE ARGUED AND ESTABLISHED IN THE EXPROPRIATION CASE, WHICH WAS ORDERED REINSTATED BY THIS COURT.—** As to whether the Republic may still challenge Vidal's heirship in the Expropriation Case, this is an issue not raised in any of the Petitions resolved by this Court in its July 7, 2010 Decision. It involves legal and factual matters that need to be argued and established in the Expropriation Case, which was ordered reinstated by this Court before the RTC-Branch 1. Thus, it is beyond the ambit of this Court to determine by mere motion for clarification of the Republic.

## APPEARANCES OF COUNSEL

*The Solicitor General* for the Republic of the Philippines, and National Power Corporation.

*Office of the Government Corporate Counsel,* and *Office of the General Counsel (NTC)* for National Transmission Corp.

*Agrava Martinez & Reyes* for Teofilo Cacho, and Atty. Godofredo Cabildo.

*Angara Abello Concepcion Regala & Cruz* for Demetria Confesor Vidal, Azimuth International Development Corp., and Maria Cristina Fertilizer Corp.

*Atienza Madrid & Formento and Gonzales Relova (+) Muyco De Guzman & Quiño* for Land Trade Realty Corp.

*Boen Dorotheo R. Cabahug* for PNB.

## R E S O L U T I O N

**LEONARDO-DE CASTRO, *J.*:**

On July 7, 2010, the First Division of this Court promulgated its Decision in seven consolidated Petitions, with the following dispositive portion:

WHEREFORE, premises considered, the Court renders the following judgment in the Petitions at bar:

1) In **G.R. No. 170375** (Expropriation Case), the Court **GRANTS** the Petition for Review of the Republic of the Philippines. It **REVERSES and SETS ASIDE** the Resolutions dated July 12, 2005 and October 24, 2005 of the Regional Trial Court, Branch 1 of Iligan City, Lanao del Norte. It further **ORDERS** the reinstatement of the Complaint in Civil Case No. 106, the admission of the Supplemental Complaint of the Republic, and the return of the original record of the case to the court of origin for further proceedings. No costs.

2) In **G.R. Nos. 178779 and 178894** (Quieting of Title Case), the Court **DENIES** the consolidated Petitions for Review of Landtrade Realty Corporation, Teofilo Cacho, and/or Atty. Godofredo Cabildo for lack of merit. It **AFFIRMS** the Decision dated January 19, 2007 and Resolution dated July 4, 2007 of the Court of Appeals in CA-G.R. CV. No. 00456, affirming *in toto* the Decision dated July 17, 2004 of the Regional Trial Court, Branch 3 of Iligan City, Lanao del Norte, in Civil Case No. 4452. Costs against Landtrade Realty Corporation, Teofilo Cacho, and Atty. Godofredo Cabildo.

3) In **G.R. No. 170505** (The Ejectment or Unlawful Detainer Case – execution pending appeal before the Regional Trial Court), the Court **DENIES** the Petition for Review of Landtrade Realty Corporation for being moot and academic given that the Regional Trial Court, Branch 1 of Iligan City, Lanao del Norte had already rendered a Decision dated December 12, 2005 in Civil Case No. 6613. No costs.

4) In **G.R. Nos. 173355-56 and 173563-64** (The Ejectment or Unlawful Detainer Case – execution pending appeal before the Court of Appeals), the Court **GRANTS** the consolidated Petitions for *Certiorari* and Prohibition of the National Power Corporation and National Transmission Corporation. It **SETS ASIDE** the Resolution dated June 30, 2006 of the Court of Appeals in CA-G.R. SP Nos.

00854 and 00889 for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction. It further **ORDERS** the Court of Appeals to issue a writ of preliminary injunction enjoining the execution of the Decision dated December 12, 2005 of the Regional Trial Court, Branch 1 of Iligan City, Lanao del Norte, in Civil Case No. 6613, while the same is pending appeal before the Court of Appeals in CA-G.R. SP Nos. 00854 and 00889. It finally **DIRECTS** the Court of Appeals to resolve without further delay the pending appeals before it, in CA-G.R. SP Nos. 00854 and 00889, in a manner not inconsistent with this Decision. No costs.

5) In **G.R. No. 173401** (Cancellation of Titles and Reversion Case), the Court **GRANTS** the Petition for Review of the Republic of the Philippines. It **REVERSES** and **SETS ASIDE** the Orders dated December 13, 2005 and May 16, 2006 of the Regional Trial Court, Branch 4 of Iligan City in Civil Case No. 6686. It further **ORDERS** the reinstatement of the Complaint in Civil Case No. 6686 and the return of the original record of the case to the court of origin for further proceedings. No costs.[1]

In a Resolution[2] dated August 25, 2010, the Court denied with finality the separate motions for reconsideration filed by [1] Teofilo Cacho (Teofilo) and Atty. Godofredo Cabildo (Atty. Cabildo); [2] Land Trade Realty Corporation (LANDTRADE); and [3] Demetria Vidal (Vidal), Azimuth International Development Corporation (AZIMUTH), and Maria Cristina Fertilizer Corporation (MCFC), considering that the basic issues were already passed upon and there was no substantial argument to warrant a modification of the previous judgment of the Court.

Also in the August 25, 2010 Resolution, the Court denied the joint motion of Vidal, AZIMUTH, and MCFC to refer the cases to the Court *En Banc* because per SC Circular No. 2-89 dated February 7, 1989, as amended by the Resolution dated November 18, 1993, the Court *En Banc* is not an appellate court to which decisions or resolutions of the Divisions may be appealed. It is for this same reason that the Court is now similarly denying the Motion [To Refer to Court *En Banc* G.R.

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[1] *Rollo* (G.R. No. 170375), Vol. II, pp. 1835-1837.

[2] *Id*. at 1941-A to 1941-B.

Nos. 178779 and 178894, G.R. Nos. 170505, 173355-56, 173562-64 (sic) and G.R. No. 173401] of LANDTRADE.

Thus, the only other matter left for determination of this Court is the Motion for Leave to File and Admit Attached Motion for Clarification, with the appended Motion for Clarification, of the Republic of the Philippines (Republic). The Republic is concerned that the pronouncements of this Court as regards the Quieting of Title Case (G.R. Nos. 178779 and 178894) would effectively bar or limit the prosecution of the Cancellation of Titles and Reversion Case (G.R. No. 173401) and Expropriation Case (G.R. No. 170375). Hence, the Republic seeks the following reliefs from this Court:

> WHEREFORE, it is respectfully prayed that a clarification be made confirming that:
>
> 1. The pronouncement in *G.R. Nos. 178779* and *178894* that: *"Azimuth is the successor-in-interest of Demetria Vidal to the extent of 23 hectares"* is without prejudice to the final disposition of Civil Case No. 6686 for reversion; and,
>
> 2. The pronouncement in *G.R. Nos. 178779* and *178894*, on *Demetria Vidal Confesor*'s heirship *vis-à-vis* her supposed right to transfer title to Azimuth, is without prejudice to the outcome of Civil Case No. 106 (Expropriation) where the government may present eveidence (*sic*) to belie the aforestated heirship andor (sic) Demetria Confesor Vidal's entitlement to just compensation.
>
> Other reliefs deemed just and equitable under the premises are likewise prayed for.[3]

The Court only partly grants the Motion for Clarification of the Republic.

In the Quieting of Title Case, the Court held:

> Thus, the Court of Appeals did not err when it affirmed *in toto* the judgment of the RTC-Branch 3 which declared, among other things, that (a) Vidal is the sole surviving heir of Doña Demetria, who alone has rights to and interest in the subject parcels of land; **(b) AZIMUTH is Vidal's successor-in-interest to portions of the said**

[3] *Id.* at 1970.

**properties in accordance with the 1998 Memorandum of Agreement and 2004 Deed of Conditional Conveyance**; (c) Teofilo is not the son or heir of Doña Demetria; and (d) Teofilo, Atty. Cabildo, and their transferees/assignees, including LANDTRADE, have no valid right to or interest in the same properties. (Emphasis supplied.)[4]

Of the total land area of 38.23 hectares covered by Original Certificate of Title (OCT) Nos. 0-1200 (a.f.) and 0-1201 (a.f.), in the name of Doña Demetria Cacho (Doña Demetria), Vidal transferred her rights to and interests in a portion thereof, measuring 23 hectares, to AZIMUTH by virtue of the aforementioned 1998 Memorandum of Agreement and 2004 Deed of Conditional Conveyance. However, it should be stressed that the main issue in the Quieting of Title Case was who between Vidal and Teofilo had valid title to the subject properties as Doña Demetria's rightful surviving heir. The extent or area of the properties inherited was not put into question in said case.

Moreover, the Court also ordered in its July 7, 2010 Decision that the Cancellation of Titles and Reversion Case be reinstated before the Regional Trial Court, Branch 4 (RTC-Branch 4) of Iligan City, Lanao del Norte. It is the main contention of the Republic in said case that OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.) are null and void because they covered parcels of land beyond those granted by the land registration court to Doña Demetria in GLRO Record Nos. 6908 and 6909. Should the RTC-Branch 4 affirm the nullity of the two OCTs, then it can order the cancellation of said certificates of title and the reversion to the Republic of the parcels of land unlawfully included therein.

The Court agrees with the Republic that necessarily, the rights to and interests in the entire 38.23 hectares, covered by OCT Nos. 0-1200 (a.f.) and 0-1201 (a.f.), claimed by Vidal as the declared sole heir of Doña Demetria in the Quieting of Title Case, should be without prejudice to the outcome of the Cancellation of Titles and Reversion Case yet to be heard by the RTC-Branch 4. As Vidal's successor-in-interest to the 23 hectares of the subject properties, AZIMUTH only stepped

[4] *Id*. at 1803.

into the former's shoes in so far as said portion is concerned. No one can acquire a right greater than what the transferor himself has. As the saying goes, the spring cannot rise higher than its source.[5] As a consequence, the rights to and interests in the 23-hectare portion of the subject properties, acquired by AZIMUTH under the 1998 Memorandum of Agreement and 2004 Deed of Conditional Conveyance, referred to by this Court in the Quieting of Title Case, are likewise dependent on the final judgment in the Cancellation of Titles and Reversion Case.

As to whether the Republic may still challenge Vidal's heirship in the Expropriation Case, this is an issue not raised in any of the Petitions resolved by this Court in its July 7, 2010 Decision. It involves legal and factual matters that need to be argued and established in the Expropriation Case, which was ordered reinstated by this Court before the RTC-Branch 1. Thus, it is beyond the ambit of this Court to determine by mere motion for clarification of the Republic.

**WHEREFORE,** premises considered, the Court hereby *RESOLVES***:**

(1) *TO DENY WITH FINALITY* the Motion [To Refer to Court *En Banc* G.R. Nos. 178779 and 178894, G.R. Nos. 170505, 173355-56, 173562-64 (sic) and G.R. No. 173401] of Land Trade Realty Corporation;

(2) *TO PARTLY GRANT* the Motion for Clarification of the Republic of the Philippines by declaring that the rights to and interests in the 23-hectare portion of the subject properties, transferred by Demetria Vidal to Azimuth International Development Corporation by virtue of the 1998 Memorandum of Agreement and 2004 Deed of Conditional Conveyance, referred to by this Court in G.R. Nos. 178779 and 178894 (Quieting of Title Case), shall be without prejudice to the outcome of Civil Case No. 6686 (Cancellation of Titles and Reversion Case), which this Court, in its Decision dated July 7, 2010, ordered reinstated before the Regional trial Court, Branch 4 of Iligan City, Lanao del Norte; and

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[5] *Sanchez v. Quinio*, 502 Phil. 40, 49 (2005).

(3) *TO ORDER* that no further pleadings shall be entertained in these consolidated cases and that entry of judgment be made in due course.

**SO ORDERED.**

*Corona, C.J. (Chairperson), Velasco, Del Castillo,* and *Perez, JJ.,* concur.

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**THIRD DIVISION**

[G.R. No. 172394. October 13, 2010]

**H. TAMBUNTING PAWNSHOP, INC.,** *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

**SYLLABUS**

**1. TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX; PERSONS LIABLE; PAWNSHOPS.**— It is now settled that for purposes of determining their tax liability, pawnshops are treated as non-bank financial intermediaries.

**2. ID.; ID.; ID.; ID.; ID.; FIRST LEVY.**— The VAT on non-bank financial intermediaries was first levied under R.A. No. 7716 (*Expanded Value-Added Tax Law*), where Sections 3 and 17 thereof provide: "Section 3**.** Section 102 of the National Internal Revenue, as amended is hereby further amended to read as follows: Section 102. *Value-added tax on sale of services and use or lease of properties*. – There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived from the sale or exchange of services, including the use or lease of properties. The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or

consideration x x x services of banks, **non-bank financial intermediaries** and finance companies; x x x Section. 17. *Effectivity of the Imposition of VAT on Certain Goods, Properties and Services.* – The value-added tax shall be levied assessed and collected on the following transactions, two (2) years after the effectivity of this Act: x x x (b) Services rendered by banks, nonbank financial intermediaries, finance companies and other financial companies and other financial intermediaries not performing quasi-banking functions; x x x."

**3. ID.; ID.; ID.; ID.; ID.; SECOND LEVY.—** However, Section 11 of R.A. No. 8241 amended Section 17 of R.A. No. 7716 to move the effectivity of the VAT on non-bank financial intermediaries to January 1, 1998, *viz*: "Section 11. Section 17 of Republic Act No. 7716 is hereby amended to read as follows: Section 17. *Effectivity of the Imposition of VAT on Certain Goods, Properties and Services.* – The value-added tax shall be levied assessed and collected on the following transactions starting **January 1, 1998**: x x x (b) Services rendered by banks, nonbank financial intermediaries, finance companies and other financial intermediaries not performing quasi-banking functions; x x x."

**4. ID.; ID.; ID.; ID.; ID.; THIRD LEVY.—** Later, R.A. No. 8424 (*National Internal Revenue Code* or *Tax Reform Act of* 1997) again moved the effectivity of the imposition of the VAT to December 31, 1999, to wit: "Section 5. *Transitory Provisions-Deferment of the Effectivity of the Imposition of VAT on Certain Services.* – The effectivity of the imposition of the value-added tax on services as prescribed in Section 17(a) and (b) of Republic Act No. 7716, as amended by Republic Act No. 8241, is hereby further deferred until **December 31, 1999**, unless Congress deems otherwise: Provided, That the said services shall continue to pay the applicable tax prescribed under the present provisions of the National Internal Revenue Code, as amended."

**5. ID.; ID.; ID.; ID.; ID.; FOURTH LEVY.—** Still later, R.A. No. 8761 retarded the effectivity of the VAT on non-bank financial intermediaries to January 1, 2001, thus: "Section 1. Section 5 of Republic Act No. 8424 is hereby amended to read as follows: Section 5. *Transitory Provisions - Effectivity of the Imposition of VAT on Certain Services.* – The imposition of the value-added tax on the following services shall take effect on **January 1, 2001**: x x x (b) Services rendered by banks, non-bank

financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions; x x x."

**6. ID.; ID.; ID.; ID.; FIFTH LEVY.—** Lastly, R.A. No. 9010 revised the effectivity of the VAT on non-bank financial intermediaries by making it start on January 1, 2003: "SECTION 1. Section 5 of Republic Act No. 8424 as amended by Republic Act No. 8761 is hereby further amended to read as follows: Section 5. *Transitory Provisions - Effectivity of the Imposition of VAT on Certain Services.* – The imposition of the value-added tax on the following services shall take effect on **January 1, 2003**: x x x (b) Services rendered by banks, non-bank financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions; x x x."

**7. ID.; ID.; ID.; ID.; THE CONSECUTIVE DEFERMENTS OF THE EFFECTIVITY DATE OF THE APPLICATION OF VAT ON PAWNSHOPS RESULTED IN THEIR NON-LIABILITY FOR VAT DURING THE AFFECTED TAXABLE YEARS.—** Accordingly, the consecutive deferments of the effectivity date of the application of VAT on non-bank financial intermediaries like pawnshops resulted in their non-liability for VAT during the affected taxable years. Specifically, in *First Planters Pawnshop*, *supra*, the Court ruled on the VAT liability of pawnshops for taxable years from 1996 to 2002, holding: "xxx Since petitioner is a non-bank financial intermediary, it is subject to 10% VAT for the tax years 1996 to 2002; however, with the levy, assessment and collection of VAT from non-bank financial intermediaries being specifically **deferred** by law, then petitioner is not liable for VAT during these tax years. But with the full implementation of the VAT system on non-bank financial intermediaries starting January 1, 2003, petitioner is liable for 10% VAT for said tax year. And beginning 2004 up to the present, by virtue of R.A. No. 9238, Petitioner is no longer liable for VAT but it is subject to percentage tax on gross receipts from 0% to 5%, as the case may be."

**8. ID.; ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE VAT DEFICIENCY ASSESSMENT AND THE SURCHARGE SERVED ON TAMBUNTING BY THE BIR LACKED LEGAL BASIS AND MUST BE CANCELED.—** The aforequoted pronouncement in *First Planters Pawnshop* has been reiterated in *Tambunting Pawnshop, Inc. v. Commissioner of Internal*

*Revenue* and in *TFS, Incorporated v. Commissioner of Internal Revenue*, thereby affirming the non-liability for VAT of pawnshops in taxable years 1996-2002 by virtue of the deferment of its imposition. Consequently, the VAT deficiency assessment and the surcharge served on Tambunting by the BIR lacked legal basis and must be canceled.

**9. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, TAMBUNTING IS ENTITLED TO A REFUND OF ANY AMOUNT PAID PURSUANT TO THE SETTLEMENT AGREEMENT CORRESPONDING TO TAXABLE YEAR 2000 ONLY.—** As earlier mentioned, however, Tambunting paid to the BIR 25% of its VAT liability for the years 2000 to 2002 pursuant to a settlement agreement. The tax liability in question herein includes taxable year 2000 only. To align with the result herein, therefore, Tambunting is entitled to a refund of any amount paid pursuant to the settlement agreement corresponding to taxable year 2000 only.

**APPEARANCES OF COUNSEL**

*Siguion Reyna Montecillo & Ongsiako* for petitioner.
*The Solicitor General* for respondent.

**D E C I S I O N**

**BERSAMIN, *J.*:**

The issue herein is whether the petitioner, a pawnshop operator, was liable for VAT and the compromise penalty for taxable year 2000.

On August 29, 2003, petitioner H. Tambunting Pawnshop, Inc. (Tambunting), a domestic corporation duly licensed to engage in the pawnshop business, received an assessment notice dated August 27, 2003 from the Bureau of Internal Revenue (BIR), demanding the payment of deficiency Value-Added Tax (VAT) and compromise penalty for taxable year 2000 in the amounts of ₱5,212,404.52 and ₱25,000, respectively.

On September 15, 2003, Tambunting, disclaiming its liability, protested the assessment with the respondent Commissioner of Internal Revenue (CIR), arguing that a pawnshop business was not subject to VAT and the compromise penalty.[1]

Due to the inaction of the CIR on the protest, Tambunting filed on April 2, 2004 its petition for review with the Court of Tax Appeals (CTA) pursuant to Section 228 of Republic Act No. 8424 (*National Internal Revenue Code* or *Tax Reform Act of* 1997).[2]

In a decision dated April 11, 2005,[3] the CTA Second Division denied the petition for review, to wit:

WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, petitioner is hereby ORDERED to pay respondent Commissioner of Internal Revenue the

[1] *Rollo*, p. 29.

[2] Section 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: xxx

x x x x x x x x x

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

**If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**

[3] *Rollo*, pp. 46-64.

deficiency VAT for taxable year 2000 in the amount of PhP 5,212,404.52, plus 25% surcharge and 20% delinquency interest per annum from September 29, 2003 until fully paid, pursuant to Section 248 and 249 of the NIRC of 1997, as amended.

The amount of PhP25,000 imposed by way of compromise penalty is hereby DELETED.

SO ORDERED.

On April 29, 2005, Tambunting filed a *motion for partial reconsideration*.[4] Later on, on May 26, 2005, Tambunting submitted a written *manifestation,* attaching a copy of Bureau of Internal Revenue (BIR) tax payment deposit slip (BIR Form No. 0605) and the corresponding schedule evidencing its payment of ₱828,809.67 for the years from 2000 to 2002 pursuant to a settlement agreement with BIR allowing Tambunting to pay 25% of its VAT due.[5]

On July 14, 2005, however, the CTA Second Division denied Tambunting's *motion for partial reconsideration* in a resolution dated July 14, 2005.[6]

On August 22, 2005, Tambunting appealed by *petition for review* to the CTA *en banc*.[7]

On March 21, 2006, the CTA *en banc* rendered its assailed decision,[8] disposing thus:

WHEREFORE, the Court e*n banc* finds no reversible error to warrant the reversal of the assailed Decision promulgated on April 11, 2005 and the Resolution dated July 14, 2005, respectively.

Accordingly, the instant Petition for Review is hereby DENIED and the assailed Decision and Resolution are AFFIRMED *in toto*.

SO ORDERED.

[4] *Id.*, pp. 65-80.

[5] *Id.*, pp. 29-30.

[6] *Id.*, pp. 79-80.

[7] *Id.*, pp. 81-140.

[8] *Id.*, pp. 28-43.

The CTA *en banc* denied Tambunting's *motion for reconsideration* on April 18, 2006.[9]

Hence, Tambunting has appealed, insisting that:

THE CTA *EN BANC*'S DECISION OF 21 MARCH 2006 AND RESOLUTION DATED 18 APRIL 2006 ARE NOT IN ACCORDANCE WITH LAW AND SETTLED JURISPRUDENCE ON THE MATTER.

Tambunting's main argument is that pawnshops are not within the concept of "all services" and "similar services" as provided in Section 108 (A) of the *National Internal Revenue Code*.[10] Tambunting also argues that the enumeration under Section 108(A) of the *National Internal Revenue Code* of services subject to VAT is exclusive.

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[9] *Id.*, pp. 44-45.

[10] Section 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* (A) *Rate and Base of Tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties. The phrase *"sale or exchange of services"* means the performance of all kinds or services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire another domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase 'sale or exchange of services' shall likewise include:

The petition has merit.

It is now settled that for purposes of determining their tax liability, pawnshops are treated as non-bank financial intermediaries.[11]

The VAT on non-bank financial intermediaries was first levied under R.A. No. 7716 (*Expanded Value-Added Tax Law*), where Sections 3 and 17 thereof provide:

(1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan secret formula or process, goodwill, trademark, trade brand or other like property or right;

(2) The lease of the use of, or the right to use of any industrial, commercial or scientific equipment;

(3) The supply of scientific, technical, industrial or commercial knowledge or information;

(4) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right as is mentioned in subparagraph (2) or any such knowledge or information as is mentioned in subparagraph (3);

(5) The supply of services by a nonresident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery or other apparatus purchased from such nonresident person;

(6) The supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;

(7) The lease of motion picture films, films, tapes and discs; and

(8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time.

Lease of properties shall be subject to the tax herein imposed irrespective of the place where the contract of lease or licensing agreement was executed if the property is leased or used in the Philippines.

The term *"gross receipts"* means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

x x x x x x x x x

[11] *First Planters Pawnshop v. Commissioner of Internal Revenue*, G.R. No. 174134, July 30, 2008, 560 SCRA 621.

Section 3. Section 102 of the National Internal Revenue, as amended is hereby further amended to read as follows:

Section 102. *Value-added tax on sale of services and use or lease of properties*.- There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration x x x

x x x services of banks, **non-bank financial intermediaries** and finance companies; x x x

Section 17. *Effectivity of the Imposition of VAT on Certain Goods, Properties and Services.*- The value-added tax shall be levied assessed and collected on the following transactions, two (2) years after the effectivity of this Act:

x x x x x x x x x

(b) Services rendered by banks, nonbank financial intermediaries, finance companies and other financial companies and other financial intermediaries not performing quasi-banking functions; x x x

However, Section 11 of R.A. No. 8241 amended Section 17 of R.A. No. 7716 to move the effectivity of the VAT on non-bank financial intermediaries to January 1, 1998, *viz*:

Section 11. Section 17 of Republic Act No. 7716 is hereby amended to read as follows:

Section 17. *Effectivity of the Imposition of VAT on Certain Goods, Properties and Services.*- The value-added tax shall be levied assessed and collected on the following transactions starting **January 1, 1998**:

x x x x x x x x x

(b) Services rendered by banks, non–bank financial intermediaries, finance companies and other financial intermediaries not performing quasi-banking functions; x x x

Later, R.A. No. 8424 (*National Internal Revenue Code* or *Tax Reform Act of* 1997) again moved the effectivity of the imposition of the VAT to December 31, 1999, to wit:

Section 5. *Transitory Provisions- Deferment of the Effectivity of the Imposition of VAT on Certain Services.*- The effectivity of the imposition of the value-added tax on services as prescribed in Section 17(a) and (b) of Republic Act No. 7716, as amended by Republic Act No. 8241, is hereby further deferred until **December 31, 1999**, unless Congress deems otherwise: Provided, That the said services shall continue to pay the applicable tax prescribed under the present provisions of the National Internal Revenue Code, as amended.

Still later, R.A. No. 8761 retarded the effectivity of the VAT on non-bank financial intermediaries to January 1, 2001, thus:

Section 1. Section 5 of Republic Act No. 8424 is hereby amended to read as follows:

Section 5. *Transitory Provisions- Effectivity of the Imposition of VAT on Certain Services*.- The imposition of the value-added tax on the following services shall take effect on **January 1, 2001**:

x x x x x x x x x

(b) Services rendered by banks, non-bank financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions; x x x

Lastly, R.A. No. 9010 revised the effectivity of the VAT on non-bank financial intermediaries by making it start on January 1, 2003:

Section 1. Section 5 of Republic Act No. 8424 as amended by Republic Act No. 8761 is hereby further amended to read as follows:

Section 5. *Transitory Provisions- Effectivity of the Imposition of VAT on Certain Services.*- The imposition of the value-added tax on the following services shall take effect on **January 1, 2003**:

x x x x x x x x x

(b) Services rendered by banks, non-bank financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions; x x x

Accordingly, the consecutive deferments of the effectivity date of the application of VAT on non-bank financial intermediaries like pawnshops resulted in their non-liability for

VAT during the affected taxable years. Specifically, in *First Planters Pawnshop, supra,* the Court ruled on the VAT liability of pawnshops for taxable years from 1996 to 2002, holding:

> xxx Since petitioner is a non-bank financial intermediary, it is subject to 10% VAT for the tax years 1996 to 2002; however, with the levy, assessment and collection of VAT from non-bank financial intermediaries being specifically **deferred** by law, then petitioner is not liable for VAT during these tax years. But with the full implementation of the VAT system on non-bank financial intermediaries starting January 1, 2003, petitioner is liable for 10% VAT for said tax year. And beginning 2004 up to the present, by virtue of R.A. No. 9238, Petitioner is no longer liable for VAT but it is subject to percentage tax on gross receipts from 0% to 5%, as the case may be.

The aforequoted pronouncement in *First Planters Pawnshop* has been reiterated in *Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*[12] and in *TFS, Incorporated v. Commissioner of Internal Revenue,*[13] thereby affirming the non-liability for VAT of pawnshops in taxable years 1996-2002 by virtue of the deferment of its imposition. Consequently, the VAT deficiency assessment and the surcharge served on Tambunting by the BIR lacked legal basis and must be canceled.

As earlier mentioned, however, Tambunting paid to the BIR 25% of its VAT liability for the years 2000 to 2002 pursuant to a settlement agreement. The tax liability in question herein includes taxable year 2000 only. To align with the result herein, therefore, Tambunting is entitled to a refund of any amount paid pursuant to the settlement agreement corresponding to taxable year 2000 only.

**WHEREFORE,** we grant the petition for review on *certiorari*, and reverse and set aside the decision dated March 21, 2006 and the resolution dated April 18, 2006 of the Court of Tax Appeals *en banc*. We declare that the petitioner was not liable for the Value-Added Tax in taxable year 2000; and order the

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[12] G.R. No. 179085, January 21, 2010, 610 SCRA 514.

[13] G.R. No. 166829, April 19, 2010.

Commissioner of Internal Revenue to refund to H. Tambunting Pawnshop, Inc. any amount paid pursuant to the settlement agreement corresponding to taxable year 2000 only.

No pronouncement on cost of suit.

**SO ORDERED.**

*Corona,*[*] *C.J. (Chairperson), Carpio Morales, Villarama, Jr.,* and *Sereno, JJ.,* concur.

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**FIRST DIVISION**

[G.R. No. 173342. October 13, 2010]

**ZAMBOANGA FOREST MANAGERS CORP.,** *petitioner, vs.* **NEW PACIFIC TIMBER AND SUPPLY CO., *et al.,*** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL UNDER RULE 45; CERTIFIED TRUE COPIES OF THE ASSAILED DECISION AND RESOLUTION OF CA ARE TO BE ATTACHED TO THE PETITION; CASE AT BAR.—** For a party which characterized the present petition as one seeking the review of the 29 June 2004 and 21 June 2006 issued by the CA in CA-G.R. SP No. 80110, ZFMC curiously fails to even mention the same resolutions in its discussion of the grounds in support of the petition. Instead, ZFMC limits its discourse on the defects of the 30 June 2003 decision rendered by the Office of the President in O.P. Case No. 5613, the reversal and setting aside of which is ultimately sought in its prayer. In so doing, however, ZFMC evidently loses sight of the fact that the petition for review

[*] Designated as additional member per Raffle dated October 11, 2010 in lieu of Justice Arturo D. Brion.

on *certiorari* under Rule 45 of the *1997 Rules of Civil Procedure* is the remedy available to a party "desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the *Sandiganbayan*, the Regional Trial Court or other courts whenever authorized by law." Rather than the 30 June 2003 decision in O.P. Case No. 5613, the proper subjects of this petition are, therefore, the aforesaid 29 June 2004 and 21 June 2006 resolutions in CA-G.R. SP No. 80110 which, respectively, dismissed ZFMC's petition for review and denied its motion for reconsideration of said dismissal.

**2. ID.; ID.; APPEAL UNDER; RULE 43; PETITIONER MUST FORMULATE A CONCISE STATEMENT OF THE FACTS AND THE ISSUES INVOLVED; CASE AT BAR.—** The foregoing preliminary matters thus clarified, we find that the CA cannot be faulted for dismissing the petition for review ZFMC filed pursuant to Rule 43 of the *Rules* by way of appeal from the 30 June 2003 decision in O.P. Case No. 5613. A perusal of said petition shows that, instead of formulating its own "concise statement of the facts and the issues involved" as required under Rule 43 of the *Rules*, ZFMC merely quoted the first ten (10) pages of the 25 June 1985 decision in MNR Case No. 4023. Altogether oblivious of the missing third page of its copy of said decision and the relevant facts it resultantly omitted.

**3. ID.; ID.; ID.; ID.; CONTENTS OF PETITION SHOULD INCLUDE MATERIAL AND RELEVANT DOCUMENTS; APPEAL PROPERLY DISMISSED FOR NONCOMPLIANCE THEREWITH.—** x x x. ZFMC also appended copies of only the following documents to its petition, *viz.*: (a) the decision in O.P. Case No. 5613; (b) its motion for reconsideration thereof; and, (c) the 30 September 2003 order denying said motion for lack of merit. Despite being alerted to the deficiencies of its petition in the CA's 30 January 2004 resolution directing the submission of the pleadings filed before the MNR and the Office of the President, ZFMC stubbornly maintained that said documents were no longer necessary since the undisputed facts of the case were already narrated in the 25 June 1984 decision rendered in MNR Case No. 4023. While it is admittedly the petitioner who decides at the outset which relevant documents will be appended to his petition, it has been held that the CA has the duty to ensure that "the submission of supporting

documents is not merely perfunctory. The practical aspect of this duty is to enable the CA to determine at the earliest possible time the existence of *prima facie* merit in the petition." With the third page missing from ZFMC's copy of the 25 June 1985 decision in MNR Case No. 4023 and the particulars it omitted as a consequence, we find that the CA's directive for the submission of the pleadings the parties filed in said case and in O.P. Case No. 5613 was clearly necessary for the proper appreciation of the facts and the issues relevant to the petition before it. Considering that a petitioner's failure to attach material and relevant documents to his petition is a sufficient ground to dismiss it, the CA correctly dealt with ZFMC's failure to comply with its directive by dismissing the petition pursuant to Section 7, Rule 43 of the *Rules*.

**4. ID.; ID.; ID.; ID.; ID.; A PARTY'S FAILURE TO COMPLY WITH THE CA'S DIRECTIVE FOR SUBMISSION OF PLEADINGS, WITHOUT JUSTIFIABLE CAUSE, IS ALSO A GROUND FOR THE DISMISSAL OF AN APPEAL UNDER SECTION 1(H), RULE 50 OF THE RULES; CASE AT BAR.—** Still insisting on the superfluity of the submission of said pleadings in its 28 July 2004 motion for reconsideration of the dismissal of its petition, ZFMC had, of course, requested for reasonable time within which to comply with the CA's earlier directive. In the twenty-two months which elapsed from the filing of said motion up to the denial thereof in CA's resolution dated 21 June 2006, however, the record shows that ZFMC miserably failed to submit the pleadings filed by the parties before the MNR and the Office of the President. To our mind, ZFMC's omission was fatal when viewed in the light of the above-discussed deficiencies of its petition and its added failure to submit copies of the very orders it sought to be affirmed by the CA, *i.e.*, the BFD Director's orders dated 8 May 1974 and 11 November 1974. By and of itself, a party's failure to comply with the CA's directive without justifiable cause is also a ground for the dismissal of an appeal under Section 1(h), Rule 50 of the *Rules*.

**5. ID.; ID.; ID.; RIGHT TO APPEAL MERELY A STATUTORY PRIVILEGE; FAILURE OF A PARTY TO CONFORM TO THE RULES REGARDING APPEAL WILL RENDER THE JUDGMENT FINAL AND EXECUTORY; CASE AT BAR.—** Granted by the CA an extension of fifteen (15) days from 25 October, 2003 or until 9 November, 2003 within which to file

its petition for review, it does not likewise help ZFMC's cause any that it was only able to do so on 24 November 2003. Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory.

**6. ID.; ID.; JUDGMENTS; FINALITY; EXCEPTIONS; CASE AT BAR.**— Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court — not even the Supreme Court — has the power to revise, review, change or alter the same. The basic rule 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 at some definite date fixed by law. Admittedly, the rule that a judgment that has become final and executory can no longer be disturbed, altered or modified admits of exceptions in special cases. In filing the petition at hand, however, ZFMC has once again hindered the proper appreciation of the facts of the case by failing to submit copies of the BFD Director's orders dated 8 May 1974 and 11 November 1974, a complete copy of the 25 June 1985 decision in MNR Case No. 4023 and the pleadings the parties filed before the MNR and the Office of the President. Even if we were, therefore, to excuse ZFMC's procedural lapses before the CA, there would still be a paucity of bases for the reversal of the 30 June 2003 decision in O.P. Case No. 5613.

## APPEARANCES OF COUNSEL

*Francisco and Cagampang Law Offices* for petitioner.
*Gaspar Tagalo* for respondents.

## D E C I S I O N

**PEREZ, *J.*:**

The petition for review on certiorari at bench was filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure* in view of the following resolutions issued by the Court of Appeals (CA) in CA-G.R. SP No. 80110: (a) Resolution dated 29 June 2004, dismissing the petition for review filed by petitioner Zamboanga Forest Managers Corporation (ZFMC) pursuant to Rule 43 of the same *Rules*;[1] and, (b) Resolution dated 21 June 2006, denying the motion for reconsideration of said dismissal.[2]

### *The Facts*

Petitioner Zamboanga Forest Managers Corporation (ZFMC) is the holder of Timber License Agreement No. 205 covering an unspecified area at Sibuco and Siocon in Zamboanga Del Norte and Zamboanga City.[3] On the other hand, respondent New Pacific Timber and Supply Co. (NEPATCO) is the holder of Timber License Agreement No. 8 over an area consisting of 19,350.0 hectares of public forest situated in the same locality. In connection with a boundary dispute lodged before the Bureau of Forest Development (BFD), it appears that ZFMC and NEPATCO agreed on the demarcation of their respective concession areas pursuant to a compromise agreement dated 18 April 1973.[4] Acting on said agreement as well as the reports submitted by Foresters Carlos R. Retino and Juan B. Galo[5] of the Zamboanga City District Forestry Office, then BFD Regional Officer-in-Charge Regulo D. Bala issued an order dated 8 May 1974, the dispositive portion of which states:

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[1] *Rollo*, pp. 61-63.

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

[3] *Id.* at 39.

[4] *Id.* at 40-42.

[5] *Id.* at 42-45.

"Foregoing considered and in order to resolve immediately the alleged encroachment of NEPATCO inside the area of ZFMC, it is hereby ordered that the common boundary line which was actually laid down and blazed by about 2 to 3 meters wide on the ground as indicated on the attached sketch and which forms part of this Order, be adopted, it being in conformity with the Supplemental Agreement dated April 8, 1973 between parties concerned notwithstanding that said agreement does not contravene existing policies, rules and regulations of the Bureau of Forest Development.

"Henceforth, the technical description for TLA No. 8 of NEPATCO is described in part, to wit: 'x x x to corner 14, intersection of the cutline and the boundary line of TLA No. 205 (Prop.) of ZFMC; thence N17' W, 2,600 meters to Corner 14-A, identical to Corner 11-B, of TLA No. 205 (Prop.) of ZFMC; thence N17' W, 6,650 meters to Corner 14-B, identical to Corner 11-A of TLA No. 205 (Prop.) of ZFMC; thence following a creek upstream in a general Northeasterly direction about 275 meters to Corner 15, identical to Corner 11 of TLA No. 205 (Prop.) of ZFMC x x x."

"Likewise, the technical description for TLA No. 205 (Prop.) for ZFMC is described in part, to wit: 'x x x to Corner 11, a point at the bank of a creek, identical to Corner 15 of NEPATCO; thence following said creek, down stream in a general Southwesterly direction about 275 meters in a straight (direct) distance to Corner 11-A a point at its bank; thence 817 E, 7,650 meters to Corner 11-B, identical to 14-A, a point S82 E, 375 meters from the junction of Lemon Creek and Saz River, thence S17'E, 2950 meters to Corner 12, a point at the Bank of Talisayan River; x x x."

"For the sake of justice and equity it is likewise ordered that the logs cut, gathered and removed by NEPATCO from the licensed area of ZFMC in the total volume of 23,892.40 cubic meters be replaced and/or paid with an equal volume and grade to ZFMC, or in any manner both licensees, may agree. The disposition thereof is conditioned upon the faithful compliance by both licensees with the terms and conditions of their compromise agreement of April 18, 1973."[6]

With the denial of its motion for reconsideration of the foregoing order in the 11 November 1974 order issued in the

[6] *Id.* at 38-39.

case,[7] NEPATCO elevated the matter to then Ministry of Natural Resources (MNR) via the appeal docketed thereat as MNR Case No. 4023. While affirming the resolution of the boundary dispute, however, then MNR Minister Teodoro Q. Peña rendered a decision dated 25 June 1984, absolving NEPATCO of liability for cutting lumber within ZFMC's concession area,[8] upon the following findings and conclusion:

> [NEPATCO] is being held liable for 23,892.40 cubic meters of timber. This is not based on actual measurement, but as stated in the memorandum of Juan B. Galo dated January 14, 1974, merely calculated on the average stand of 148.40 cubic meters per hectare (60 cms. in diameter) for 161 hectares which were found to have been logged inside the concession of [ZFMC]. It was also stated that there was no physical count or inventory of stumps because majority of the stumps were already in the stage of advanced decay.
>
> There is no legally admissible evidence that it was [NEPATCO] who actually logged in the area. It should be noted that logging allegedly took place in 1961 and 1962 while investigation was conducted in 1973. The information that it was [NEPATCO] who conducted the logging allegedly came from one Ramon Serna, Sr., a tractor operator of [ZFMC] and former tractor operator of [NEPATCO] and corroborated by one Florentino Isidro, a concession guard of [ZFMC] and a former capataz of the falling and brushing crews of [NEPATCO]. It does not appear how they conveyed their information to District Forester Galo, but it is evident that [NEPATCO] was not given a chance to cross-examine the said informants nor to present evidence to controvert said information. Hence, the information has no probative value for being hearsay, which kind of evidence suffers from intrinsic weakness and in competency to satisfy the mind. (Jones on Evidence, 2nd ed. 1991). Furthermore, the credibility of the informant would be questionable considering that they were employed by [ZFMC] and may be considered biased.
>
> Even the earlier report of Forester Carlos R. Retino dated July 17, 1973 contained nothing more than the unsubstantiated statement that "it was found out this areas were logged by NEPATCO since in 1961 and 1962." This purely gratuitous statement will not suffice to establish the liability of [NEPATCO].

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[7] *Id.* at 46.

[8] *Id.* at 38-51.

x x x x x x x x x

x x x (T)here is merit in the conte(n)tion of [NEPATCO] that logging operations conducted by either or both within the overlapped portion should be pres(um)ed done in good faith. Prior to the compromise agreement, each party had the right to insist that its area was the area as defined in the technical description of its concession, and therefore, each party had a right to log in that area. That is why the matter was settled by compromise. The fact that the logging camp and forest nursery of [NEPATCO] were found within the area which fell in the concession of [ZFMC] by virtue of the compromise agreement, is proof positive that appellant was acting in good faith in operating in said area. If it knew beforehand that the area belonged to [ZFMC], it could not have invested time, money and effort in the construction of its logging camp and its forest nursery thereat. If [NEPATCO] was engaged in clandestine operations, it would not have openly advertised its presence in that forbidden area."[9]

Dissatisfied, ZFMC perfected the appeal which was docketed before the Office of the President as O.P. Case No. 5613. Through then Acting Deputy Executive Secretary for Legal Affairs Manuel B. Gaite, the Office of the President rendered a one-page decision dated 30 June 2003, affirming *in toto* the MNR Minister's 25 June 1984 decision by adopting the aforequoted findings and conclusions.[10] In receipt of the order dated 30 September 2003 order[11] denying its motion for reconsideration of said decision in O.P. Case No. 5613,[12] ZFMC filed the 20 November 2003 petition for review docketed as CA-G.R. No. 80110[13] before the CA. Through its then Fifteenth Division, the CA issued a resolution dated 30 January 2004, requiring ZFMC to: (a) furnish a copy of its petition to the Office of the President and NEPATCO; (b) submit copies of the pleadings filed before the Office of the President and the MNR; and, (c)

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[9] *Id.* at 47-50.

[10] *Id.* at 37.

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

[12] *Id.* at 64-65.

[13] *Id.* at 21-36.

submit the correct and current address of NEPATCO and/or its counsel of record, Atty. Gaspar V. Tagalo.[14]

On 9 March 2004, ZFMC filed its compliance by submitting the correct current address of Atty. Tagalo and informing the CA that a copy of its petition had already been furnished NEPATCO and both the Office of the President and the Office of the Solicitor General (OSG). Anent the CA's directive to submit the pleadings filed in MNR Case No. 4023 and O.P. Case No. 5613, however, ZFMC averred, among other matters, that the undisputed facts of the case were already exhaustively discussed in the 25 June 1984 decision rendered in MNR Case No. 4023 which purportedly upheld BFD Director Bala's finding that NEPATCO encroached into its concession area; and, that the submission of the pleadings filed before the MNR and the Office of the President was no longer necessary since the only issue submitted for resolution was the propriety of the subsequent deletion of NEPATCO's liability for cutting lumber within its concession area.[15] Finding ZFMC's compliance unsatisfactory, the CA's then Twenty-First Division issued the resolution dated 29 June 2004, dismissing the petition pursuant to Section 7, Rule 43 of the *1997 Rules of Civil Procedure*.[16]

On 4 August 2004, ZFMC filed a motion for reconsideration of the dismissal of its petition, reiterating the material allegations in its compliance and seeking permission to submit certified copies of the pleadings filed in MNR Case No. 4023 and O.P. Case No. 5613 "within a reasonable time, in the interest of justice."[17] In view of the denial of its motion for reconsideration in the resolution dated 21 June 2006 issued by the CA's Special Former Twenty-First Division,[18] ZFMC filed the petition at bench which originally named both NEPATCO and the Office of the

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[14] CA *rollo*, p. 49.

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

[16] *Id.* at 58-60.

[17] *Id.* at 62-63.

[18] *Rollo*, pp. 67-68.

President as respondents.[19] Acting on the manifestation and motion filed by the OSG,[20] however, the Court issued the 12 February 2007 resolution dropping the Office of the President as public respondent in the case.[21]

***The Issue***

ZFMC urges the grant of its petition on the ground that the 30 June 2003 decision rendered by the Office of the President in O.P. Case No. 5613 is a memorandum decision which should be nullified for lack of statement of the facts and the law on which the same based.[22]

***The Court's Ruling***

We find the petition bereft of merit.

For a party which characterized the present petition as one seeking the review of the 29 June 2004 and 21 June 2006 issued by the CA in CA-G.R. SP No. 80110,[23] ZFMC curiously fails to even mention the same resolutions in its discussion of the grounds in support of the petition. Instead, ZFMC limits is discourse on the defects of the 30 June 2003 decision rendered by the Office of the President in O.P. Case No. 5613, the reversal and setting aside of which is ultimately sought in its prayer. In so doing, however, ZFMC evidently loses sight of the fact that the petition for review on *certiorari* under Rule 45 of the *1997 Rules of Civil Procedure* is the remedy available to a party "desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the *Sandiganbayan*, the Regional Trial Court or other courts whenever authorized by law."[24] Rather than the 30 June 2003 decision in O.P. Case No. 5613, the proper subjects of this petition are,

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[19] *Id.* at 9-20.

[20] *Id.* at 71-75.

[21] *Id.* at 82-83.

[22] *Id.* at 14.

[23] *Id.* at 8.

[24] Section 1, Rule 45, *1997 Rules of Civil Procedure.*

therefore, the aforesaid 29 June 2004 and 21 June 2006 resolutions in CA-G.R. SP No. 80110 which, respectively, dismissed ZFMC's petition for review and denied its motion for reconsideration of said dismissal.

The foregoing preliminary matters thus clarified, we find that the CA cannot be faulted for dismissing the petition for review ZFMC filed pursuant to Rule 43 of the *Rules* by way of appeal from the 30 June 2003 decision in O.P. Case No. 5613. A perusal of said petition shows that, instead of formulating its own "concise statement of the facts and the issues involved" as required under Rule 43 of the *Rules,* ZFMC merely quoted the first ten (10) pages of the 25 June 1985 decision in MNR Case No. 4023. Altogether oblivious of the missing third page of its copy of said decision and the relevant facts it resultantly omitted, ZFMC also appended copies of only the following documents to its petition, *viz.*: (a) the decision in O.P. Case No. 5613; (b) its motion for reconsideration thereof; and, (c) the 30 September 2003 order denying said motion for lack of merit. Despite being alerted to the deficiencies of its petition in the CA's 30 January 2004 resolution directing the submission of the pleadings filed before the MNR and the Office of the President, ZFMC stubbornly maintained, that said documents were no longer necessary since the undisputed facts of the case were already narrated in the 25 June 1984 decision rendered in MNR Case No. 4023.

While it is admittedly the petitioner who decides at the outset which relevant documents will be appended to his petition, it has been held that the CA has the duty to ensure that "the submission of supporting documents is not merely perfunctory. The practical aspect of this duty is to enable the CA to determine at the earliest possible time the existence of *prima facie* merit in the petition."[25] With the third page missing from ZFMC's copy of the 25 June 1985 decision in MNR Case No. 4023 and the particulars it omitted as a consequence, we find that the CA's directive for the submission of the pleadings the parties

[25] *Atillo v. Bombay,* 404 Phil. 179, 191 (2001).

filed in said case and in O.P. Case No. 5613 was clearly necessary for the proper appreciation of the facts and the issues relevant to the petition before it. Considering that a petitioner's failure to attach material and relevant documents to his petition is a sufficient ground to dismiss it,[26] the CA correctly dealt with ZFMC's failure to comply with its directive by dismissing the petition pursuant to Section 7, Rule 43 of *Rules* which provides as follows:

> Sec. 7. *Effect of failure to comply with requirements.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

Still insisting on the superfluity of the submission of said pleadings in its 28 July 2004 motion for reconsideration of the dismissal of its petition, ZFMC had, of course, requested for reasonable time within which to comply with the CA's earlier directive. In the twenty-two months which elapsed from the filing of said motion[27] up to the denial thereof in CA's resolution dated 21 June 2006, however, the record shows that ZFMC miserably failed to submit the pleadings filed by the parties before the MNR and the Office of the President. To our mind, ZFMC's omission was fatal when viewed in the light of the above-discussed deficiencies of its petition and its added failure to submit copies of the very orders it sought to be affirmed by the CA, *i.e.*, the BFD Director's orders dated 8 May 1974 and 11 November 1974. By and of itself, a party's failure to comply with the CA's directive without justifiable cause is also a ground for the dismissal of an appeal under Section 1 (h), Rule 50 of the *Rules*.[28]

Granted by the CA an extension of fifteen (15) days from 25 October, 2003 or until 9 November, 2003 within which to

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[26] *Ferrer v. Villanueva*, G.R. No. 155025, 24 August 2007, 531 SCRA 97, 103.

[27] By registered mail on 4 August 2004.

[28] Section 1. *Grounds for dismissal of appeal.* - An appeal may be

file its petition for review,[29] it does not likewise help ZFMC's cause any that it was only able to do so on 24 November 2003.[30] Although appeal is an essential part of our judicial process,[31] it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege.[32] Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory.[33] Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not[34] and no court – not even the Supreme Court – has the power to revise, review, change or alter the same.[35] The basic rule 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 at some definite date fixed by law.[36]

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dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x x x x x x

(h) Failure of the appellant to appear at the preliminary conference under Rule 48 or to comply with orders, circulars or directives of the court without justifiable cause.

[29] CA *rollo*, p. 8.

[30] *Id.* at 9-24.

[31] *Republic v. Luriz,* G.R. No. 158992, 26 January 2007, 513 SCRA 140, 148.

[32] *Heirs of Teofilo Gaudiano v. Benemerito*, G.R. No. 174247, 21 February 2007, 516 SCRA 416, 424.

[33] *Peña v. Government Service Insurance System*, G.R. No. 159520, 19 September 2006, 502 SCRA 383, 396.

[34] *Club Filipino, Inc. v. Araullo*, G.R. No. 167723, 29 November 2006, 508 SCRA 583, 592.

[35] *Aguilar v. Manila Banking Corporation*, G.R. No. 157911, 19 September 2006, 502 SCRA 354, 374-375.

[36] *Filipro, Inc. v. Permanent Savings & Loan Bank*, G.R. No. 142236, 27 September 2006, 503 SCRA 430, 438 .

Admittedly, the rule that a judgment that has become final and executory can no longer be disturbed, altered or modified admits of exceptions in special cases.[37] In filing the petition at hand, however, ZFMC has once again hindered the proper appreciation of the facts of the case by failing to submit copies of the BFD Director's orders dated 8 May 1974 and 11 November 1974, a complete copy of the 25 June 1985 decision in MNR Case No. 4023 and the pleadings the parties filed before the MNR and the Office of the President. Even if we were, therefore, to excuse ZFMC's procedural lapses before the CA, there would still be a paucity of bases for the reversal of the 30 June 2003 decision in O.P. Case No. 5613.

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

**SO ORDERED.**

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

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**SECOND DIVISION**

[G.R. No. 173463. October 13, 2010]

**GLOBAL BUSINESS HOLDINGS, INC. (formerly Global Business Bank, Inc.),** *petitioner, vs.* **SURECOMP SOFTWARE, B.V.,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; DENIAL; CANNOT BE QUESTIONED BY A**

[37] *Industrial Timber Corporation v. Ababon*, G.R. No. 164518, 25 January 2006, 480 SCRA 171, 180.

**RULE 65 PETITION.—** An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. As such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment.

**2. ID.; ID.; ID.; ID.; ID.; EXCEPTION.—** To justify the grant of the extraordinary remedy of *certiorari*, the denial of the motion to dismiss must have been tainted with grave abuse of discretion. By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.

**3. ID.; ID.; ID.; ID.; ID.; ID.; CASE AT BAR.—** In the instant case, Global did not properly substantiate its claim of arbitrariness on the part of the trial court judge that issued the assailed orders denying the motion to dismiss. In a petition for *certiorari*, absent such showing of arbitrariness, capriciousness, or ill motive in the disposition of the trial judge in the case, we are constrained to uphold the court's ruling, especially because its decision was upheld by the CA.

**4. COMMERCIAL LAW; CORPORATION CODE; CORPORATIONS; FOREIGN, NON-RESIDENT AND UNLICENSED; CAPACITY TO DO BUSINESS IN THE PHILIPPINES; CANNOT FILE SUITS IN THE PHILIPPINES.—** The determination of a corporation's capacity is a factual question that requires the elicitation of a preponderant set of facts. As a rule, unlicensed foreign non-resident corporations doing business in the Philippines cannot file suits in the Philippines. This is mandated under Section 133 of the Corporation Code, which reads: "Sec. 133. *Doing business without a license*. – No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines, but such corporation

may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws."

**5. ID.; ID.; ID.; ID.; ID.; ID.; RATIONALE.—** A corporation has a legal status only within the state or territory in which it was organized. For this reason, a corporation organized in another country has no personality to file suits in the Philippines. In order to subject a foreign corporation doing business in the country to the jurisdiction of our courts, it must acquire a license from the Securities and Exchange Commission and appoint an agent for service of process. Without such license, it cannot institute a suit in the Philippines.

**6. ID.; ID.; ID.; ID.; ID.; ID.; EXCEPTION. —** The exception to this rule is the doctrine of estoppel. x x x A foreign corporation doing business in the Philippines without license may sue in Philippine courts a Filipino citizen or a Philippine entity that had contracted with and benefited from it. A party is estopped from challenging the personality of a corporation after having acknowledged the same by entering into a contract with it. The principle is applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes, chiefly in cases where such person has received the benefits of the contract.

**7. ID.; ID.; ID.; ID.; ID.; ID.; CASE AT BAR.—** Global is estopped from challenging Surecomp's capacity to sue. x x x Due to Global's merger with ABC and because it is the surviving corporation, it is as if it was the one which entered into contract with Surecomp. In the merger of two existing corporations, one of the corporations survives and continues the business, while the other is dissolved, and all its rights, properties, and liabilities are acquired by the surviving corporation. This is particularly true in this case. Based on the findings of fact of the RTC, as affirmed by the CA, under the terms of the merger or consolidation, Global assumed all the liabilities and obligations of ABC as if it had incurred such liabilities or obligations itself. In the same way, Global also has the right to exercise all defenses, rights, privileges, and counter-claims of every kind and nature which ABC may have or invoke under the law. These findings of fact were never contested by Global in any of its pleadings filed before this Court.

**APPEARANCES OF COUNSEL**

*Sycip Salazar Hernandez & Gatmaitan* for petitioner.
*Poblador Bautista & Reyes* for respondent.

**D E C I S I O N**

**NACHURA,* *J.*:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated May 5, 2006 and the Resolution[2] dated July 10, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 75524.

The facts of the case are as follows:

On March 29, 1999, respondent Surecomp Software, B.V. (Surecomp), a foreign corporation duly organized and existing under the laws of the Netherlands, entered into a software license agreement with Asian Bank Corporation (ABC), a domestic corporation, for the use of its IMEX Software System (System) in the bank's computer system for a period of twenty (20) years.[3]

In July 2000, ABC merged with petitioner Global Business Holdings, Inc. (Global),[4] with Global as the surviving corporation. When Global took over the operations of ABC, it found the System unworkable for its operations, and informed Surecomp of its decision to discontinue with the agreement and to stop further payments thereon. Consequently, for failure of Global

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* In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 25, 2010.

[1] Penned by Associate Justice Estela M. Perlas-Bernabe, with Associate Justices Remedios A. Salazar-Fernando and Hakim S. Abdulwahid, concurring; *rollo*, pp. 10-18.

[2] *Id.* at 19.

[3] *Id.* at 11.

[4] Formerly known as Global Business Bank, Inc.

to pay its obligations under the agreement despite demands, Surecomp filed a complaint for breach of contract with damages before the Regional Trial Court (RTC) of Makati. The case was docketed as Civil Case No. 01-1278.[5]

In its complaint, Surecomp alleged that it is a foreign corporation not doing business in the Philippines and is suing on an isolated transaction. Pursuant to the agreement, it installed the System in ABC's computers for a consideration of US$298,000.00 as license fee. ABC also undertook to pay Surecomp professional services, which included on-site support and development of interfaces, and annual maintenance fees for five (5) subsequent anniversaries, and committed to purchase one (1) or two (2) Remote Access solutions at discounted prices. In a separate transaction, ABC requested Surecomp to purchase on its behalf a software called MF Cobol Runtime with a promise to reimburse its cost. Notwithstanding the delivery of the product and the services provided, Global failed to pay and comply with its obligations under the agreement. Thus, Surecomp demanded payment of actual damages amounting to US$319,955.00 and an additional amount of US$227,610.00 for Global's unilateral pretermination of the agreement, exemplary damages, attorney's fees and costs of suit.[6]

Instead of filing an answer, Global filed a motion to dismiss based on two grounds: (1) that Surecomp had no capacity to sue because it was doing business in the Philippines without a license; and (2) that the claim on which the action was founded was unenforceable under the Intellectual Property Code of the Philippines.[7]

On the first ground, Global argued that the contract entered into was not an isolated transaction since the contract was for a period of 20 years. Furthermore, Global stressed that it could not be held accountable for any breach as the agreement was entered into between Surecomp and ABC. It had not, in any

[5] *Rollo,* p. 11.

[6] *Id.*

[7] *Id.* at 12.

manner, taken part in the negotiation and execution of the agreement but merely took over the operations of ABC as a result of the merger. On the second ground, Global averred that the agreement, being a technology transfer arrangement, failed to comply with Sections 87 and 88 of the Intellectual Property Code of the Philippines.[8]

In the interim, Global filed a motion for leave to serve written interrogatories to Surecomp in preparation for the hearing on the motion to dismiss, attaching thereto its written interrogatories.

After an exchange of pleadings on the motions filed by Global, on June 18, 2002, the RTC issued an Order,[9] the pertinent portions of which read:

> After a thorough and careful deliberation of the respective arguments advanced by the parties in support of their positions in these two (2) incidents, and since it cannot be denied that there is indeed a contract entered into between the plaintiff [Surecomp] and the defendant [Global], the latter as a successor in interest of the merging corporation Asian Bank, defendant [Global] is estopped from denying plaintiff's [Surecomp's] capacity to sue it for alleged breach of that contract with damages. Its argument that it was not the one who actually contracted with the plaintiff [Surecomp] as it was the merging Asian Bank which did, is of no moment as it does not relieve defendant Global Bank of its contractual obligation under the Agreement on account of its undertaking under it:
>
> > "x x x shall be responsible for all the liabilities and obligations of ASIANBANK in the same manner as if the Merged Bank had itself incurred such liabilities or obligations, and any pending claim, action or proceeding brought by or against ASIANBANK may be prosecuted by or against the Merged Bank. The right of creditors or liens upon the property of ASIANBANK shall not be impaired by the merger; provided that the Merged Bank shall have the right to exercise all defenses, rights, privileges, set-offs and counter-claims of every kind and nature which ASIANBANK may have, or with the Merged Bank may invoke under existing laws."

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[8] *Id*.

[9] Penned by Pairing Judge Cesar D. Santamaria, Branch 146, Makati City; *id.* at 105-107.

It appearing however that the second ground relied upon by the defendant [Global], *i.e.*, that the cause of action of the plaintiff is anchored on an unenforceable contract under the provision of the Intellectual Property Code, will require a hearing before the motion to dismiss can be resolved and considering the established jurisprudence in this jurisdiction, that availment of mode of discovery by any of the parties to a litigation, shall be liberally construed to the end that the truth of the controversy on hand, shall be ascertained at a less expense with the concomitant facility and expeditiousness, the motion to serve written interrogatories upon the plaintiff [Surecomp] filed by the defendant [Global] is GRANTED insofar as the alleged unenforceability of the subject contract is concerned. Accordingly, the latter is directed to serve the written interrogatories upon the plaintiff [Surecomp], which is required to act on it in accordance with the pertinent rule on the matter.

Necessarily, the resolution of the motion to dismiss is held in abeyance until after a hearing on it is property conducted, relative to the second ground aforementioned.

SO ORDERED.[10]

Surecomp moved for partial reconsideration, praying for an outright denial of the motion to dismiss, while Global filed a motion for reconsideration.[11]

On November 27, 2002, the RTC issued an Order,[12] the *fallo* of which reads:

WHEREFORE, the Order of this Court dated 18 June 2002 is modified. Defendant's [Global's] Motion to Dismiss dated 17 October 2001 is denied on the two grounds therein alleged. Defendant [Global] is given five (5) days from receipt of this Order within which to file its Answer.

The resolution of defendant's [Global's] Motion to Serve Written Interrogatories is held in abeyance pending the filing of the Answer.

SO ORDERED.[13]

[10] *Id.* at 106-107.

[11] *Id.* at 13, 108, 510.

[12] *Id.* at 108-110.

[13] *Id.* at 110.

In partially modifying the first assailed Order, the RTC ratiocinated, *viz.*:

> This court sees no reason to further belabor the issue on plaintiff's capacity to sue since there is a *prima facie* showing that defendant entered into a contract with defendant and having done so, willingly, it cannot now be made to raise the issue of capacity to sue [*Merrill Lynch Futures, Inc. v. CA, 211 SCRA 824]*. That defendant was not aware of plaintiff's lack of capacity to sue or that defendant did not benefit from the transaction are arguments that are hardly supported by the evidence already presented for the resolution of the Motion to Dismiss.
>
> As to the issue of unenforceability of the subject contract under the Intellectual Property Code, this court finds justification in modifying the earlier Order allowing the further presentation of evidence. It appearing that the subject contract between the parties is an executed, rather than an executory, contract the statute of frauds therefore finds no application here.
>
> xxx x x x xxx
>
> As to defendant's Motion to Serve Written Interrogatories, this court finds that resort to such a discovery mechanism while laudable is premature as defendant has yet to file its Answer. As the case now stands, the issues are not yet joined and the disputed facts are not clear.[14]

Undaunted, Global filed a petition for *certiorari* with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction under Rule 65 of the Rules of Court before the CA, contending that the RTC abused its discretion and acted in excess of its jurisdiction.[15]

On May 5, 2006, the CA rendered a Decision,[16] the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant petition is **DENIED**. The assailed Orders dated June 18, 2002 and November 27, 2002 of

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[14] *Id.* at 108-110. (Citations omitted.)

[15] *Id.* at 15.

[16] *Supra* note 1.

the Regional Trial Court of Makati City, Branch 146, in Civil Case No. 01-1278 are hereby **AFFIRMED**.

SO ORDERED.[17]

A motion for reconsideration was filed by Global. On July 10, 2006, the CA issued a Resolution[18] denying the motion for reconsideration for lack of merit.

Hence, this petition.

Global presents the following issues for resolution: (1) whether a special civil action for *certiorari* is the proper remedy for a denial of a motion to dismiss; and (2) whether Global is estopped from questioning Surecomp's capacity to sue.[19]

The petition is bereft of merit.

I

An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. As such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment.[20]

To justify the grant of the extraordinary remedy of *certiorari*, the denial of the motion to dismiss must have been tainted with grave abuse of discretion. By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of

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[17] *Id.* at 17.

[18] *Supra* note 2.

[19] *Rollo*, pp. 511-512.

[20] *Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation*, 507 Phil. 631, 645 (2005).

positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.[21]

In the instant case, Global did not properly substantiate its claim of arbitrariness on the part of the trial court judge that issued the assailed orders denying the motion to dismiss. In a petition for *certiorari*, absent such showing of arbitrariness, capriciousness, or ill motive in the disposition of the trial judge in the case, we are constrained to uphold the court's ruling, especially because its decision was upheld by the CA.

II

The determination of a corporation's capacity is a factual question that requires the elicitation of a preponderant set of facts.[22] As a rule, unlicensed foreign non-resident corporations doing business in the Philippines cannot file suits in the Philippines.[23] This is mandated under Section 133 of the Corporation Code, which reads:

> Sec. 133. *Doing business without a license*. — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines, but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

A corporation has a legal status only within the state or territory in which it was organized. For this reason, a corporation organized in another country has no personality to file suits in the Philippines. In order to subject a foreign corporation doing business in the country to the jurisdiction of our courts, it must acquire a license from the Securities and Exchange Commission

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[21] *Id*.

[22] *Id.* at 646.

[23] *Subic Bay Metropolitan Authority v. Universal International Group of Taiwan*, 394 Phil. 691, 703 (2000).

and appoint an agent for service of process. Without such license, it cannot institute a suit in the Philippines.[24]

The exception to this rule is the doctrine of estoppel. Global is estopped from challenging Surecomp's capacity to sue.

A foreign corporation doing business in the Philippines without license may sue in Philippine courts a Filipino citizen or a Philippine entity that had contracted with and benefited from it.[25] A party is estopped from challenging the personality of a corporation after having acknowledged the same by entering into a contract with it.[26] The principle is applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes, chiefly in cases where such person has received the benefits of the contract. [27]

Due to Global's merger with ABC and because it is the surviving corporation, it is as if it was the one which entered into contract with Surecomp. In the merger of two existing corporations, one of the corporations survives and continues the business, while the other is dissolved, and all its rights, properties, and liabilities are acquired by the surviving corporation.[28] This is particularly true in this case. Based on the findings of fact of the RTC, as affirmed by the CA, under the terms of the merger or consolidation, Global assumed all the liabilities and obligations of ABC as if it had incurred such liabilities or obligations itself.

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[24] *European Resources and Technologies, Inc. v. Ingenieuburo Birkhahn + Nolte,* 479 Phil. 114, 124 (2004), citing *Subic Bay Metropolitan Authority v. Universal International Group of Taiwan, supra,* at 704; *Georg Grotjahn GMBH & Co. v. Isnani,* G.R. No. 109272, August 10, 1994, 235 SCRA 216; *Merrill Lynch Futures v. Court of Appeals,* G.R. No. 97816, July 24, 1992, 211 SCRA 824; *Antam Consolidated, Inc. v. CA,* 227 Phil. 267 (1986).

[25] *European Resources and Technologies, Inc. v. Ingenieuburo Birkhahn + Nolte, supra,* at 125.

[26] *Id.*; *Merrill Lynch Futures, Inc. v. Court of Appeals, supra* note 23, at 837.

[27] *Merrill Lynch Futures, Inc. v. Court of Appeals, supra.*

[28] *Babst v. Court of Appeals,* 403 Phil. 244, 258 (2001).

In the same way, Global also has the right to exercise all defenses, rights, privileges, and counter-claims of every kind and nature which ABC may have or invoke under the law. These findings of fact were never contested by Global in any of its pleadings filed before this Court.

**WHEREFORE,** in view of the foregoing, the Decision dated May 5, 2006 and the Resolution dated July 10, 2006 of the Court of Appeals in CA-G.R. SP No. 75524 are hereby *AFFIRMED*. Costs against petitioner.

**SO ORDERED.**

*Velasco, Jr.,*[**] *Leonardo-de Castro,*[***] *Brion,*[****] and *Mendoza, JJ.*, concur.

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**THIRD DIVISION**

[G.R. No. 173822. October 13, 2010]

**SALVADOR ATIZADO and SALVADOR MONREAL,** *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; EVALUATION OF THE TRIAL JUDGE IS GIVEN HIGHEST**

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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. 905 dated October 5, 2010.

[****] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 904 dated October 5, 2010.

**RESPECT; RATIONALE. —** It is a basic rule of appellate adjudication in this jurisdiction that the trial judge's evaluation of the credibility of a witness and of the witness' testimony is accorded the highest respect because the trial judge's unique opportunity to observe directly the demeanor of the witness enables him to determine whether the witness is telling the truth or not. Such evaluation, when affirmed by the CA, is binding on the Court unless facts or circumstances of weight have been overlooked, misapprehended, or misinterpreted that, if considered, would materially affect the disposition of the case. We thus apply the rule, considering that the petitioners have not called attention to and proved any overlooked, misapprehended, or misinterpreted circumstance. Fortifying the application of the rule is that Mirandilla's positive declarations on the identities of the assailants prevailed over the petitioners' denials and *alibi.*

**2. CRIMINAL LAW; MURDER; CONSPIRACY; PRESENT IN CASE AT BAR. —** Under the law, a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony *and* decide to commit it. Yet, the State did not have to prove the petitioners' previous agreement to commit the murder, because their conspiracy was deduced from the mode and manner in which they had perpetrated their criminal act. They had acted in concert in assaulting Llona, with their individual acts manifesting a community of purpose and design to achieve their evil end. As it is, all the conspirators in a crime are liable as co-principals. Thus, they cannot now successfully assail their conviction as co-principals in murder.

**3. ID.; ID.; DEFINED; PENALTY. —** Murder is defined and punished by Article 248 of the *Revised Penal Code* (RPC), as amended by Republic Act No. 7659, which provides: Article 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances: 1. **With treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity. 2. In consideration of a price, reward, or promise. 3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship,

or by means of motor vehicles, or with the use of any other means involving great waste and ruin. 4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity. 5. With evident premeditation. 6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

**4. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; WHEN PRESENT. —** There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which offended party might make. For treachery to be attendant, the means, method, or form of execution must be deliberated upon or consciously adopted by the offenders. Moreover, treachery must be present and seen by the witness right at the inception of the attack.

**5. ID.; MURDER; IMPOSABLE PENALTY; MINORITY APPRECIATED. —** Under Article 248 of the RPC, as amended by Republic Act No. 7659, the penalty for murder is *reclusion perpetua* to death. There being no modifying circumstances, the CA correctly imposed the lesser penalty of *reclusion perpetua* on Atizado, which was conformable with Article 63 (2) of the RPC. But *reclusion perpetua* was not the correct penalty for Monreal due to his being a minor over 15 but under 18 years of age. The RTC and the CA did not appreciate Monreal's minority at the time of the commission of the murder probably because his birth certificate was not presented at the trial. Yet, it cannot be doubted that Monreal was a minor below 18 years of age when the crime was committed on April 18, 1994. Firstly, his counter-affidavit executed on June 30, 1994 stated that he was 17 years of age. Secondly, the police blotter recording his arrest mentioned that he was 17 years old at the time of his arrest on May 18, 1994. Thirdly, Villafe's affidavit dated June 29, 1994 averred that Monreal was a minor on the date of the incident. Fourthly, as RTC's *minutes of hearing* dated March 9, 1999 showed, Monreal was 22 years old when he testified on direct examination on March 9, 1999, which meant that he was not over 18 years of age when he committed the crime. And, fifthly, Mirandilla described Monreal as a

teenager and young looking at the time of the incident. The foregoing showing of Monreal's minority was legally sufficient, for it conformed with the norms subsequently set under Section 7 of Republic Act No. 9344, also known as the *Juvenile Justice and Welfare Act of 2006*. x x x Pursuant to Article 68 (2) of the RPC, when the offender is over 15 and under 18 years of age, the penalty next lower than that prescribed by law is imposed. Based on Article 61 (2) of the RPC, *reclusion temporal* is the penalty next lower than *reclusion perpetua* to death. Applying the *Indeterminate Sentence Law* and Article 64 of the RPC, therefore, the range of the penalty of imprisonment imposable on Monreal was *prision mayor* in any of its periods, as the minimum period, to *reclusion temporal* in its medium period, as the maximum period. Accordingly, his proper indeterminate penalty is from six years and one day of *prision mayor,* as the minimum period, to 14 years, eight months, and one day of *reclusion temporal*, as the maximum period. Monreal has been detained for over 16 years, that is, from the time of his arrest on May 18, 1994 until the present. Given that the entire period of Monreal's detention should be credited in the service of his sentence, pursuant to Section 41 of Republic Act No. 9344, the revision of the penalty now warrants his immediate release from the penitentiary.

**6. ID.; CIVIL LIABILITY; AWARD OF DAMAGES, SUSTAINED; SOLIDARY LIABILITY ARISING FROM THE COMMISSION OF THE CRIME STANDS. —** Both petitioners were adjudged solidarily liable to pay damages to the surviving heirs of Llona. Their solidary civil liability arising from the commission of the crime stands, despite the reduction of Monreal's penalty. But we must reform the awards of damages in order to conform to prevailing jurisprudence. The CA granted only ₱50,000.00 as civil indemnity, ₱30,000.00 as actual damages, and ₱50,000.00 as moral damages. We hold that the amounts for death indemnity and moral damages should each be *raised* to ₱75,000.00 to accord with prevailing case law; and that exemplary damages of ₱30,000.00 due to the attendance of treachery should be further awarded, to accord with the pronouncement in *People v. Catubig*, to wit: The commission of an offense has two-pronged effect, one on the public as it breaches the social order and other upon the private victim as it causes personal sufferings, each of which, is addressed by, respectively, the prescription of heavier

punishment for the accused and by an award of additional damages to the victim. **The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.** The award of actual damages of ₱30,000.00 is upheld for being supported by the record.

**APPEARANCES OF COUNSEL**

*Vicente G. Judar* for petitioners.
*The Solicitor General* for respondent.

**D E C I S I O N**

**BERSAMIN, *J.*:**

On May 4, 2000, the Regional Trial Court (RTC), Branch 52, Sorsogon, convicted the petitioners of murder.[1] On December 13, 2005, the Court of Appeals (CA) affirmed their conviction in C.A.-G.R. CR-HC No. 01450, but modified the awarded damages.[2]

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[1] Original records, pp. 357-364 (Criminal Case No. 94-3653).

[2] *Rollo*, pp. 18-36; penned by Associate Justice Vicente S.E. Veloso, with Associate Justice Bienvenido L. Reyes and Associate Justice Amelita G. Tolentino, concurring.

The petitioners contest the CA's affirmance of their conviction in this appeal *via* petition for review on *certiorari*.

We affirm their conviction, but we reduce the penalty imposed on Salvador Monreal because the RTC and the CA did not duly appreciate his minority at the time of the commission of the crime. We order his immediate release from prison because he already served his sentence, as hereby modified. Also, we add to the damages to which the heirs of the victim were entitled in order to accord with the prevailing law and jurisprudence.

**Antecedents**

On June 20, 1994, the Office of the Sorsogon Provincial Prosecutor formally charged the petitioners and a certain Danilo Atizado (Danilo) with murder through the following information, to wit:

> That on or about the 18th day of April 1994, at Barangay Bogña, Municipality of Castilla, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously, with treachery and evident premeditation, and without any justifiable cause or motive, with intent to kill, armed with handguns, attack, assault and shot one Rogelio Llona *y* Llave, a Sangguniang Bayan member of Castilla, Sorsogon, thereby inflicting upon him mortal and serious wounds which directly caused his instantaneous death, to the damage and prejudice of his legal heirs.
>
> CONTRARY TO LAW.[3]

After the petitioners and Danilo pleaded *not guilty* to the information on November 7, 1994,[4] the trial ensued.

The witnesses for the State were Simeona Mirandilla (Mirandilla), Major Saadra Gani (Major Gani), Dr. Wilhelmo Abrantes (Dr. Abrantes), Lawrence Llona (Lawrence), and Herminia Llona (Herminia).

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[3] Original records, pp. 20-23.

[4] *Id.* pp. 55-56.

Mirandilla narrated that on April 18, 1994 she and the late Rogelio Llona (Llona), her common-law husband, had attended the fiesta of Barangay Bonga in Castilla, Sorsogon; that at about 8 *pm* of that date, they had gone to the house of Manuel Desder (Desder) in the same *barangay*; that as they and Jose Jesalva (Jesalva), a *barangay kagawad* of the place, were seated in the sala of Desder's house, she heard "thundering steps" as if people were running and then two successive gunshots; that she then saw Atizado pointing a gun at the prostrate body of Llona; that seeing Atizado about to shoot Llona again, she shouted: *Stop, that's enough*!; that while aiding Llona, she heard three clicking sounds, and, turning towards the direction of the clicking sounds, saw Monreal point his gun at her while he was moving backwards and simultaneously adjusting the cylinder of his gun; that the petitioners then fled the scene of the shooting; that she rushed to the house of *barangay* captain Juanito Lagonsing (Lagonsing) to report the shooting; and that she and Lagonsing brought Llona to a hospital where Llona was pronounced dead.[5]

Major Gani testified that the petitioners and Danilo were arrested on May 18, 1994,[6] based on the warrant of arrest issued by Judge Teodisio R. Dino, Jr. of the Municipal Trial Court in Castilla, Sorsogon.

Dr. Abrantes confirmed that Llona died due to two gunshot wounds in the back that penetrated his spinal column, liver, and abdomen.[7]

Lawrence and Herminia stated that the Llona family spent ₱30,000.00 for the funeral expenses of Llona.[8]

Denying the accusation, the petitioners interposed *alibi*. The witnesses for the Defense were Monreal, Roger Villafe (Villafe), Merlinda Lolos, Joseph Lorenzana (Lorenzana), Jesalva, and Lagonsing.

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[5] TSN, March 6, 1995, pp. 2-14.

[6] TSN, February 22, 1995, p. 8.

[7] TSN, February 20, 1995, pp. 2-4.

[8] TSN, January 9, 1995; February 22, 1995, p. 22.

The Defense showed that at the time of the commission of the crime, Atizado had been in his family residence in Barangay Tomalaytay, Castilla, Sorsogon, because he had been sick of influenza, while Monreal and Danilo had been in the house of a certain Ariel also in Barangay Tomalaytay, Castilla, Sorsogon drinking gin; that the petitioners and Danilo had not been recognized to be at the crime scene during the shooting of Llona; and that the petitioners had been implicated only because of their being employed by their uncle Lorenzana, the alleged mastermind in the killing of Llona.

As stated, on May 4, 2000, the RTC convicted the petitioners but acquitted Danilo, *viz*:

> WHEREFORE, premises considered, the Court finds accused Salvador Atizado and Salvador Monreal guilty beyond reasonable doubt of the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, with the qualifying circumstance of treachery, the Court hereby sentences each of the accused to an imprisonment of *Reclusion Perpetua* and to pay the heirs of Rogelio Llona the sum of Fifty Thousand (₱50,000.00) Pesos, Philippines currency, *in solidum*, as civil indemnity, without subsidiary imprisonment in case of insolvency; to reimburse the heirs of the victim the amount of ₱30,000.00 as actual expenses and to pay the cost.
>
> Accused Danilo Atizado on reasonable doubt is hereby acquitted of the crime charged and he being a detention prisoner, his immediate release from the provincial jail is hereby ordered, unless he is charged of other lawful cause or causes.
>
> Accused Salvador Atizado and Salvador Monreal being detained, shall be credited in full in the service of their sentence.
>
> SO ORDERED.[9]

The Court referred the petitioners' direct appeal to the CA pursuant to *People v. Mateo*.[10]

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[9] *Supra*, note 1, p. 364.

[10] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

On December 13, 2005, the CA affirmed the conviction, disposing:

> WHEREFORE, the judgment of conviction is AFFIRMED. Accused-appellants Salvador Atizado and Salvador Monreal are hereby ordered to suffer the imprisonment of *Reclusion Perpetua*. Likewise, they are ordered to pay the heirs of Rogelio Llona the amount of: (a) ₱50,000.00 as civil indemnity; (b) ₱30,000.00 as actual damages; and (c) ₱50,000.00 as moral damages.
>
> SO ORDERED.[11]

After the CA denied their *motion for reconsideration*,[12] the petitioners now appeal.

**Issue**

The petitioners submit that the RTC and the CA erred in finding them guilty of murder beyond reasonable doubt based on the eyewitness testimony of Mirandilla despite her not being a credible witness; that some circumstances rendered Mirandilla's testimony unreliable, namely: (*a*) she had failed to identify them as the assailants of Llona, because she had not actually witnessed them shooting at Llona; (*b*) she had merely assumed that they had been the assailants from the fact that they had worked for Lorenzana, the supposed mastermind; (*c*) the autopsy report stated that Llona had been shot from a distance, not at close range, contrary to Mirandilla's claim; (*d*) Mirandilla's testimony was contrary to human experience; and (*e*) Mirandilla's account was inconsistent with that of Jesalva's.

**Ruling**

The conviction of the petitioners is affirmed, subject to modifications in the penalty imposed on Monreal and in the amounts and kinds of damages as civil liability.

**I.**
**Factual findings of the RTC and CA are accorded respect**

[11] *Rollo*, p. 36.

[12] *Id.*, p. 43.

The RTC and CA's conclusions were based on Mirandilla's positive identification of the petitioners as the malefactors and on her description of the acts of each of them made during her court testimony on March 6, 1995,[13] *viz*:

q Who were you saying 'we sat together'?
a Kdg. Llona, Mr. Jose Jesalva and I was letting my 5 years old child to sleep.

q Can you demonstrate or described before this Honorable Court the size of the sala and the house you wherein (sic)?
a The size of the sale (sic) is about 3 x 3 meters.

q Now, please show to this Honorable Court the relative position, the sitting arrangement of yours, Kgd. Llona and Kgd. Jesalva.
a I was sitting on a long bench then my child was on my lap, then Kdg. Llona was infront of me, I was at the right side of Kdg. Llona

q How about Kdg. Jesalva?
a This Kgd. Jesalva was facing Kgd. Llona and Kgd. Llona was facing the door in otherwords, the door was at his back.

q Was the door open?
a Yes, sir.

q Was the door immediately found… Rather was this the main door of the house?
a That was the main door leading to the porch of the house.

q And from the porch is the main stairs already?
a Yes, sir.

q Now, what were you doing there after dinner as you said you have finished assisting the persons in Bongga about the program, ... after that, what were you doing then?
a I was letting my child to sleep and Kgd. Llona was fanning my child.

q How about Kgd. Jesalva?
a His head was stopping (sic) because of his drunkenness.

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[13] At pp. 5-10.

q Can you tell this Honorable Court, while you were on that situation, if there was any incident that happened?
a **There was a sudden thundering steps as if they were running and there were successive shots.**

q **Simultaneously with these two (2) successive shots can you see the origin or who was responsible for the shots?**
a **Upon hearing the shots, I turned my head and saw Salvador Atizado.**

q **Who is this Salvador Atizado?**
a **He was the one who shot Kgd. Llona.**

q **Can you be able to identify him?**
a **(Witness identifying the person, and when asked of his name answered Salvador Atizado.)**

q So when you heard the shots, who was actually shot?
a Kgd. Llona, because after looking at the (3) persons I saw Kgd. Llona sliding downward.

q Then after that what happened?
a Then I stood immediately and I told the persons responsible 'stop that's enough', and I gave assistance to Kgd. Llona.

q Then after that what happened?
a My intention was to let Kgd. Llona push-up but I heard three (3) clicks of the trigger of the gun.

q Then what did you do when you heard that?
a **After which I turned my head suddenly then I saw this Salvador Monreal but at that time I do not know his name.**

q **Then what did you see of him?**
a **I saw this Salvador Monreal stepping backward and he was adjusting the cylinder of the gun.**

q Now, when you saw and heard Atizado three (3) clicks of the gun, can you see where the gun was pointed at?
a It was pointed towards me.

q So, there were three (3) shots that did not actually fired towards you?
a Yes, sir.

q **So when you said that you saw this man Monreal, can you still recognize this man?**

a Yes, sir.

q **Could you be able to point at him, if he is in Court?**
a **Yes, sir.**

q **Kindly please go down and tap his shoulder?**
a (witness going down and proceeded to the first bench and tap the shoulder of the person, the person tapped by the witness answered to the name Salvador Monreal.)

q You said, when you stood up and face with him while he was adjusting his revolver and he was moving backward, did you see other persons as his companion, if any?
a At the first time when I turned my head back, I saw this Atizado he was already on the process of leaving the place.

q Who is the first name of this Atizado?
a Danilo Atizado

q And did they actually leave the place at that moment?
a Salvador Monreal was the one left.

Our own review persuades us to concur with the RTC and the CA. Indeed, Mirandilla's positive identification of the petitioners as the killers, and her declarations on what each of the petitioners did when they mounted their sudden deadly assault against Llona left no doubt whatsoever that they had conspired to kill and had done so with treachery.

It is a basic rule of appellate adjudication in this jurisdiction that the trial judge's evaluation of the credibility of a witness and of the witness' testimony is accorded the highest respect because the trial judge's unique opportunity to observe directly the demeanor of the witness enables him to determine whether the witness is telling the truth or not.[14] Such evaluation, when affirmed by the CA, is binding on the Court unless facts or circumstances of weight have been overlooked, misapprehended, or misinterpreted that, if considered, would materially affect the disposition of the case.[15]

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[14] *People v. Pascual*, G.R. No. 173309, January 23, 2007, 512 SCRA 385, 392.

[15] *People v. Domingo*, G.R. No. 184958, September 17, 2009, 600 SCRA 280, 293; *People v. Gerasta*, G.R. No. 176981, December 24, 2008, 575 SCRA 503, 512.

We thus apply the rule, considering that the petitioners have not called attention to and proved any overlooked, misapprehended, or misinterpreted circumstance. Fortifying the application of the rule is that Mirandilla's positive declarations on the identities of the assailants prevailed over the petitioners' denials and *alibi*.[16]

Under the law, a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony *and* decide to commit it.[17] Yet, the State did not have to prove the petitioners' previous agreement to commit the murder,[18] because their conspiracy was deduced from the mode and manner in which they had perpetrated their criminal act.[19] They had acted in concert in assaulting Llona, with their individual acts manifesting a community of purpose and design to achieve their evil end. As it is, all the conspirators in a crime are liable as co-principals.[20] Thus, they cannot now successfully assail their conviction as co-principals in murder.

Murder is defined and punished by Article 248 of the *Revised Penal Code* (RPC), as amended by Republic Act No. 7659, which provides:

> Article 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances:
>
> 1. **With treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

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[16] See *People v. Magdaraog*, G.R. No. 151251, May 19, 2004, 428 SCRA 529, 531.

[17] Article 8, *Revised Penal Code*.

[18] *People v. Cabrera*, G.R. No. 105992, February 1, 1955, 241 SCRA 28.

[19] *People v. Factao*, G.R. No. 125966, January 13, 2004, 419 SCRA 38.

[20] *People v. Peralta*, No. L-19069, October 29, 1968, 25 SCRA 759, 776-777; *People v. Pablo*, G.R. Nos. 120394-97, January 16, 2001, 349 SCRA 79.

2. In consideration of a price, reward, or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which offended party might make.[21] For treachery to be attendant, the means, method, or form of execution must be deliberated upon or consciously adopted by the offenders.[22] Moreover, treachery must be present and seen by the witness right at the inception of the attack.[23]

The CA held that Mirandilla's testimonial narrative "sufficiently established that treachery attended the attack o[n] the victim" because Atizado's shooting the victim at the latter's back had been intended to ensure the execution of the crime; and that Atizado and Monreal's conspiracy to kill the victim was proved by their presence at the scene of the crime each armed with a handgun that they had fired except that Monreal's handgun did not fire.[24]

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[21] Article 14, paragraph 16, *Revised Penal Code*.

[22] *People v. Punzalan,* G.R. No. 54562, August 6, 1982, 153 SCRA 1, 2.

[23] *People v. Sayaboc*, G.R. No. 147201, January 15, 2004, 419 SCRA 659, 660; *People v. Cajurao*, G.R. No. 122767, January 20, 2004, 420 SCRA 207, 208; *People v. Guillermo*, G.R. No. 147786, January 20, 2004, 420 SCRA 326, 328.

[24] CA *Rollo*, pp. 163-165.

We concur with the CA on the attendance of treachery. The petitioners mounted their deadly assault with suddenness and without the victim being aware of its imminence. Neither an altercation between the victim and the assailants had preceded the assault, nor had the victim provoked the assault in the slightest. The assailants had designed their assault to be swift and unexpected, in order to deprive their victim of the opportunity to defend himself.[25] Such manner constituted a deliberate adoption of a method of attack that ensured their unhampered execution of the crime.

## II.
## Modification of the Penalty on Monreal and of the Civil Damages

Under Article 248 of the RPC, as amended by Republic Act No. 7659, the penalty for murder is *reclusion perpetua* to death. There being no modifying circumstances, the CA correctly imposed the lesser penalty of *reclusion perpetua* on Atizado, which was conformable with Article 63 (2) of the RPC.[26] But *reclusion perpetua* was not the correct penalty for Monreal due to his being a minor over 15 but under 18 years of age. The RTC and the CA did not appreciate Monreal's minority at the time of the commission of the murder probably because his birth certificate was not presented at the trial.

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[25] *People v. Villanueva*, G.R. No. 122746, January 29, 1999, 302 SCRA 380, 382.

[26] Article 63. *Rules for the application of indivisible penalties.* — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

**In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:**

x x x x x x x x x

**2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.**

x x x x x x x x x

Yet, it cannot be doubted that Monreal was a minor below 18 years of age when the crime was committed on April 18, 1994. Firstly, his counter-affidavit executed on June 30 1994 stated that he was 17 years of age.[27] Secondly, the police blotter recording his arrest mentioned that he was 17 years old at the time of his arrest on May 18, 1994.[28] Thirdly, Villafe's affidavit dated June 29, 1994 averred that Monreal was a minor on the date of the incident.[29] Fourthly, as RTC's *minutes of hearing* dated March 9, 1999 showed,[30] Monreal was 22 years old when he testified on direct examination on March 9, 1999,[31] which meant that he was not over 18 years of age when he committed the crime. And, fifthly, Mirandilla described Monreal as a teenager and young looking at the time of the incident.[32]

The foregoing showing of Monreal's minority was legally sufficient, for it conformed with the norms subsequently set under Section 7 of Republic Act No. 9344, also known as the *Juvenile Justice and Welfare Act of* 2006,[33] *viz*:

> Section 7. *Determination of Age.* - **The child in conflict with the law shall enjoy the presumption of minority**. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. **The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.**

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[27] Original records, pp. 28-29.

[28] TSN, February 22, 1995, p. 8.

[29] Original records, p. 30.

[30] *Id.*, p. 338.

[31] TSN, March 9, 1999, p. 1.

[32] TSN, March 28, 1995, pp. 50-51.

[33] The law was enacted on April 28, 2006 and took effect on May 20, 2006.

Any person contesting the age of the child in conflict with the law prior to the filing of the information in any appropriate court may file a case in a summary proceeding for the determination of age before the Family Court which shall decide the case within twenty-four (24) hours from receipt of the appropriate pleadings of all interested parties.

If a case has been filed against the child in conflict with the law and is pending in the appropriate court, the person shall file a motion to determine the age of the child in the same court where the case is pending. Pending hearing on the said motion, proceedings on the main case shall be suspended.

In all proceedings, law enforcement officers, prosecutors, judges and other government officials concerned shall exert all efforts at determining the age of the child in conflict with the law.

Pursuant to Article 68 (2) of the RPC,[34] when the offender is over 15 and under 18 years of age, the penalty next lower than that prescribed by law is imposed. Based on Article 61 (2) of the RPC, *reclusion temporal* is the penalty next lower than *reclusion perpetua* to death. Applying the *Indeterminate Sentence Law* and Article 64 of the RPC, therefore, the range of the penalty of imprisonment imposable on Monreal was *prision mayor* in any of its periods, as the minimum period, to *reclusion temporal* in its medium period, as the maximum period. Accordingly, his proper indeterminate penalty is from six years and one day of *prision mayor*, as the minimum period, to 14 years, eight months, and one day of *reclusion temporal*, as the maximum period.

[34] Article 68. *Penalty to be imposed upon a person under eighteen years of age.* — When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraphs next to the last of Article 80 of this Code, the following rules shall be observed:

1. Upon a person under fifteen but over nine years of age, who is not exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.

2. **Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.**

Monreal has been detained for over 16 years, that is, from the time of his arrest on May 18, 1994 until the present. Given that the entire period of Monreal's detention should be credited in the service of his sentence, pursuant to Section 41 of Republic Act No. 9344,[35] the revision of the penalty now warrants his immediate release from the penitentiary.

In this regard, the benefits in favor of children in conflict with the law as granted under Republic Act No. 9344, which aims to promote the welfare of minor offenders through programs and services, such as delinquency prevention, intervention, diversion, rehabilitation and re-integration, geared towards their development, are retroactively applied to Monreal as a convict serving his sentence. Its Section 68 expressly so provides:

> Section 68. *Children Who Have Been Convicted and are Serving Sentences*. – **Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time of the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act.** They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. **They shall be immediately released if they are so qualified under this Act or other applicable laws.**

Both petitioners were adjudged solidarily liable to pay damages to the surviving heirs of Llona. Their solidary civil liability arising from the commission of the crime stands,[36] despite the reduction of Monreal's penalty. But we must reform the awards of damages in order to conform to prevailing jurisprudence. The CA granted only ₱50,000.00 as civil indemnity, ₱30,000.00 as actual damages, and ₱50,000.00 as moral damages. We hold that the amounts for death indemnity and moral damages should each be *raised* to ₱75,000.00 to accord with prevailing case law;[37] and that

[35] Section 41. *Credit in Service of Sentence*. – The child in conflict with the law shall be credited in the services of his of his/her sentence with the full time spent in actual commitment and detention under this Act.

[36] Sections 6, 38 and 39 of RA No. 9344.

[37] *People v. Arbalate*, G.R. No. 183457, September 17, 2009, 600 SCRA

exemplary damages of ₱30,000.00 due to the attendance of treachery should be further awarded,[38] to accord with the pronouncement in *People v. Catubig*,[39] to wit:

> The commission of an offense has two-pronged effect, one on the public as it breaches the social order and other upon the private victim as it causes personal sufferings, each of which, is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. **The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code**.

The award of actual damages of ₱30,000.00 is upheld for being supported by the record.

**WHEREFORE,** the Court affirms the decision dated December 13, 2005 promulgated in CA-G.R. CR-HC No. 01450, subject to the following modifications:

(*a*) Salvador Monreal is sentenced to suffer the indeterminate penalty from six years and one day of *prision mayor*, as the minimum period, to 14 years, eight months, and one day of *reclusion temporal*, as the maximum period;

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239, 255; *People v. Satonero*, G.R. No. 186233, October 2, 2009, 602 SCRA 769.

[38] *Id*.

[39] G.R. No. 137842, August 23, 2001, 363 SCRA 621.

(*b*) The Court orders the Bureau of Corrections in Muntinlupa City to immediately release Salvador Monreal due to his having fully served the penalty imposed on him, unless he is being held for other lawful causes; and

(*c*) The Court directs the petitioners to pay jointly and solidarily to the heirs of Roger L. Llona ₱75,000.00 as death indemnity, ₱75,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱30,000.00 as actual damages.

Let a copy of this decision be furnished for immediate implementation to the Director of the Bureau of Corrections in Muntinlupa City by personal service. The Director of Bureau of Corrections shall report to this Court the action he has taken on this decision within five days from service.

**SO ORDERED.**

*Carpio Morales (Chairperson), Brion, Villarama, Jr.,* and *Sereno, JJ.,* concur.

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**FIRST DIVISION**

[G.R. No. 175862. October 13, 2010]

**REAL BANK, INC.,** *petitioner, vs.* **SAMSUNG MABUHAY CORPORATION,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; MEDIATION; MEDIATION IS A PART OF PRE-TRIAL AND FAILURE OF THE PLAINTIFF TO APPEAR THEREAT MERITS SANCTION ON THE PART OF THE ABSENT PARTY; SUSTAINED. —** In *Senarlo v. Judge Paderanga,* this Court accentuated that mediation is part of pre-trial and failure of the plaintiff to appear thereat merits sanction on the part of

the absent party. This court held: A.M. No. 01-10-5-SC-PHILJA dated 16 October 2001, otherwise known as the Second Revised Guidelines for the Implementation of Mediation Proceedings and Section 5, Rule 18 of the Rules of Court grant judges the discretion to dismiss an action for failure of the plaintiff to appear at mediation proceedings. A.M. No. 01-10-5-SC-PHILJA considers mediation a part of pre-trial and provides sanctions for the absent party: 12. Sanctions. Since mediation is part of Pre-Trial, the trial court shall impose the appropriate sanction including but not limited to censure, reprimand, contempt and such sanctions as are provided under the Rules of Court for failure to appear for pre-trial, in case any or both of the parties absent himself/themselves, or for abusive conduct during mediation proceedings. Under Rule 18, Section 5 of the Rules of Court, failure of the plaintiff to appear at pre-trial shall be cause for dismissal of the action: Sec. 5. Effect of failure to appear. – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

**2. LEGAL ETHICS; ATTORNEYS; WITHDRAWAL OF COUNSEL WITH CONFORMITY OF THE CLIENT IS COMPLETED ONCE THE SAME IS FILED IN COURT; PRESENT IN CASE AT BAR. —** Rule 138, Section 26 of the Rules of Court outlines the procedure in case of withdrawal of counsel. It states: RULE 138 Attorneys and Admission to Bar Sec. 26. *Change of attorneys*. – An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party. Under the first sentence of Section 26, the withdrawal of counsel with the conformity of the client is completed once the same is filed in court. No further action thereon by the court is needed other than the mechanical act of the Clerk of Court of entering the

name of the new counsel in the docket and of giving written notice thereof to the adverse party. In this case, it is uncontroverted that the withdrawal of respondent Samsung's original counsel, V.E. Del Rosario and Partners on 19 October 2000, was with the client's consent. Thus, no approval thereof by the trial court was required because a court's approval is indispensable only if the withdrawal is without the client's consent.

**3. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; IN THE ABSENCE OF CLEAR LACK OF MERIT OR INTENTION TO DELAY, JUSTICE IS BETTER SERVED BY A BRIEF CONTINUANCE, TRIAL ON THE MERITS AND FINAL DISPOSITION OF CASES BEFORE THE COURT; APPLICATION IN CASE AT BAR. —** The substantive right of respondent Samsung to recover a due and demandable obligation cannot be diminished by an unwarranted strictness in the application of a rule of procedure. In *Calalang v. Court of Appeals*, this Court underscored that unless a party's conduct is so negligent, irresponsible, contumacious or dilatory as to provide substantial grounds for dismissal for non-appearance, the court should consider lesser sanctions which would still amount into achieving the desired end. In *Bank of the Philippine Islands v. Court of Appeals*, we ruled that in the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules, courts should decide to dispense rather than wield their authority to dismiss. While not at the fore of this case, it may be stated that the state of the court docket cannot justify injudicious case dismissals. Inconsiderate dismissals, even without prejudice, do not constitute a *panacea* or a solution to the congestion of court dockets; while they lend a deceptive aura of efficiency to records of individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of cases before the court. Accordingly, the ends of justice and fairness would be best served if the parties in Civil Case No. 97-86265 are given the full opportunity to thresh out the real issues in a full blown trial. Besides, petitioner Real Bank, Inc. would not be prejudiced should the RTC proceed with Civil Case No. 97-86265 as it

is not stripped of any affirmative defenses nor deprived of due process of law.

**APPEARANCES OF COUNSEL**

*Marcos Ochoa Serapio & Tan Law Firm* for petitioner.
*Ortega Del Castillo Bacorro Odulio Calma & Carbonell* for respondent.

**D E C I S I O N**

**PEREZ, *J.*:**

This is a Petition for Review under Rule 45 of the Rules of Court filed by petitioner Real Bank, Inc., assailing the Decision[1] of the Court of Appeals in CA-G.R. SP No. 73188 dated 18 August 2006, which granted the Petition filed by herein respondent Samsung Mabuhay Corporation (respondent Samsung) and set aside the Orders dated 5 June 2002 and 2 August 2002 of the Regional Trial Court (RTC), Branch 20 of Manila, which dismissed Civil Case No. 97-86265 for failure of respondent Samsung to appear at the scheduled mediation conference. Likewise assailed is the Resolution[2] of the appellate court dated 13 December 2006 denying petitioner Real Bank, Inc.'s Motion for Reconsideration.

The generative facts are:

On 27 November 1997, respondent Samsung filed a Complaint[3] for damages against petitioner Real Bank, Inc. docketed as Civil Case No. 97-86265. The case was originally raffled to the RTC, Branch 9 of Manila. In its complaint, respondent Samsung alleged:

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[1] Penned by Associate Justice Lucenito N. Tagle with Associate Justices Marina L. Buzon and Regalado E. Maambong, concurring. *Rollo*, pp. 37-47.

[2] *Id.* at 34-35.

[3] *Id.* at 18.

Plaintiff SAMSUNG MABUHAY ELECTRONIC CORPORATION is a joint venture corporation between SAMSUNG ELECTRONICS CO. LTD., a foreign corporation duly organized and existing under Korean laws, and plaintiff MABUHAY ELECTRONICS CORPORATION, a corporation organized and existing under Philippine laws x x x.

As a result of the Joint Venture Agreement, Samsung Mabuhay Electronics Corporation became the exclusive distributor for Samsung products in the Philippines.[4]

x x x x x x x x x

2.1. Sometime in December of 1996, Conpinco Trading, a regular dealer of [respondent] Samsung Mabuhay Corporation in Davao City, issued five (5) postdated [United Coconut Planters Bank] UCPB checks payable to the order of Samsung Mabuhay Corporation, to wit:

| Check No. | Date | Amount |
|---|---|---|
| 1869863 | December 31, 1996 | ₱ 363,750.00 |
| 1869864 | December 31, 1996 | 400,000.00 |
| 1869865 | January 30, 1997 | 800,000.00 |
| 1869866 | February 28, 1997 | 800,000.00 |
| 1869867 | March 30, 1997 | 599,093.20 |

These five (5) checks were picked-up by Reynaldo Senson, former Collection Supervisor of Samsung Mabuhay Corporation for Visayas and Mindanao, at Conpinco Trading's place of business at J.P. Laurel Avenue, Bajada Drive, Davao City last December 14, 1996. x x x.

2.1.1. All of the five (5) checks were denominated to the "PAYEE'S ACCOUNT" only, the payee being Mabuhay Electronics Corporation although the proceeds of the checks were actually intended for Samsung Mabuhay Corporation. After the Joint Venture Agreement, Samsung dealers were duly requested by Samsung Mabuhay Corporation to make all checks payable to the order of Samsung Mabuhay Corporation instead of Mabuhay Electronics Corporation. Nevertheless, some dealers, like Conpinco Trading, still made out checks payable to Mabuhay Electronics Corporation.

2.1.2. Plaintiff Samsung Mabuhay Corporation continued to received (sic) checks from its local dealers payable to the order of Mabuhay Electronics Corporation. Plaintiff [Samsung Mabuhay

[4] *Id.* at 48.

Corporation] deposited the said checks to its bank account with Far East Bank and Trust Company (FEBTC), Adriatico Branch under Account No. 0113-26238-8. FEBTC accepted for deposit into Samsung Mabuhay Corporation's account therein all checks payable to Mabuhay Electronics Corporation.

2.2. Two (2) of the five (5) checks picked-up by Reynaldo Senson were remitted to Samsung Mabuhay Corporation. These checks [1869866 and 1869867] in the total amount of ₱1,399,093.20 were cleared by the drawee bank, UCPB, and the amount credited to the account of Samsung Mabuhay Corporation with FEBTC.

2.3. However, the three (3) remaining UCPB checks, *i.e.*, check nos. 1869863, 1869864, and 1869865 amounting to ₱1,563,750.00, were not remitted by Reynaldo Senson to Samsung Mabuhay Corporation. Instead, Reynaldo Senson, using an *alias* name, Edgardo Bacea, opened an account with defendant Real Bank, Malolos, Bulacan branch under the account name of one Mabuhay Electronics Company, a business entity in no way related to plaintiff Mabuhay Electronics Corporation. Mabuhay Electronics Company is a single proprietorship owned and managed by Reynaldo Senson, *alias* Edgardo Bacea.

2.4. Reynaldo Senson, *alias* Edgardo Bacea, opened an account with defendant [Real Bank] by presenting an identification card bearing Mabuhay Electronics Company, the *alias* name Edgardo Bacea identifying him as the General Manager of Mabuhay Electronics Company, and the photograph of Reynaldo Senson, x x x. Reynaldo Senson and Edgardo Bacea are one and the same person as shown in the identification card issued by Samsung Mabuhay Corporation to Reynaldo Senson x x x.

2.5. Reynaldo Senson, *alias* Edgardo Bacea, through the negligence of defendant [Real Bank], indorsed the checks and then deposited all the three (3) checks in the account of Mabuhay Electronics Company under Savings Account No. 1102-01944-2. The dorsal portion of the said checks (check nos. 1869863, 1869864, and 1869865) x x x and made integral parts hereof.

2.6. Defendant [Real Bank] then sent the three (3) checks for clearing and for payment through Far East Bank and Trust Company, Malolos, Bulacan Branch after stamping at the back of the checks the usual endorsements: "ALL PRIOR ENDORSEMENT and/or LACK OF ENDORSEMENT GUARANTEED." Conpinco Trading's account with the drawee bank, UCPB, was eventually debited for the value of the three (3) checks and Mabuhay Electronics Company's

account with defendant [Real Bank] was credited for the same amount although it was not the payee nor the person authorized by the payee.

2.7. Subsequently, Reynaldo Senson, *alias* Edgardo Bacea again through the negligence of defendant bank, was able to withdraw the amount of ₱1,563,750.00. The value of the three (3) checks were negligently credited by defendant [Real Bank] to the account of Mabuhay Electronics Company, a single proprietorship, although the check was payable only to Mabuhay Electronics Corporation, a juridical entity, and to no one else.

x x x x x x x x x

2.9. Despite plaintiffs' [Samsung Mabuhay Corporation's] demands, defendant [Real Bank] ignored and refused to reimburse them with the value of the three (3) checks. Thus, plaintiffs were constrained to hire the legal services of the law firm of V.E. Del Rosario and Partners.[5]

Petitioner Real Bank, Inc. filed its Answer[6] on 23 February 1998, to which a Reply[7] was filed by respondent Samsung on 5 March 1998.

On 12 March 1998, respondent Samsung filed an *Ex-Parte* Motion To Set Case for Pre-Trial, asking that the case be set for pre-trial.[8] In a notice dated 24 March 1998, Judge Amelia Tria-Infante (Judge Infante) of RTC, Br. 9 of Manila, set the case for pre-trial on 25 June 1998.[9]

Meantime, petitioner Real Bank, Inc. filed on 26 May 1998 a Motion to Admit Third Party Complaint against Reynaldo A. Senson *alias* Edgardo Bacea, to which was attached the Third Party Complaint.

On 22 June 1998, respondent Samsung filed its Pre-trial Brief. The pre-trial was originally set on 25 June 1998 but was reset to 17 July 1998 upon motion of petitioner Real Bank, Inc. on

[5] *Id.* at 49-53.

[6] *Id.* at 60.

[7] *Id.* at 82.

[8] *Id.* at 96.

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

the ground that its Motion to Admit Third Party Complaint was still pending resolution. Thus, the pre-trial was re-scheduled and reset to 10 September 1998.[10]

Petitioner Real Bank, Inc. once again moved for the resetting of the pre-trial conference scheduled on 10 September 1998[11] on the same ground that its Motion to Admit Third Party Complaint has yet to be resolved.

On 22 February 1999, the trial court issued an Order granting petitioner Real Bank, Inc.'s Motion to Admit Third Party Complaint and also ordered that summons be issued to third-party defendant Reynaldo A. Senson *alias* Edgardo Bacea.

On 25 May 1999, respondent Samsung filed a Motion to Dismiss the Third Party Complaint for failure of petitioner Real Bank, Inc. to prosecute its case and Motion to Set the Case for Pre-Trial.[12] On the other hand, petitioner Real Bank, Inc. filed a Motion to Serve Summons by Publication on the third-party defendant Reynaldo A. Senson *alias* Edgardo Bacea.

Citing the undue delay of Presiding Judge Infante in resolving the several motions pending before her, respondent Samsung filed a Motion for her inhibition of Judge Infante on 20 September 1999.

On 15 March 2000, the Presiding Judge of Branch 9 issued an Order[13] reading:

> Before this Court are three (3) motions.
>
> The Motion to Serve Summons by Publication is hereby GRANTED.
>
> The Motion to Dismiss Third-Party Complaint is hereby DENIED and considering that this Honorable Court can administer justice on this case with impartiality and without bias, the Motion for Inhibition is likewise DENIED.

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[10] *Id.* at 101.

[11] *Id.* at 102.

[12] *Id.* at 105.

[13] *Id.* at 109.

Let therefore, service of summons by publication be made on third-party defendant, Reynaldo Senson *alias* Edgardo Bacea doing business under the name and style "Mabuhay Electronics Company" in a newspaper of general circulation for three (3) consecutive weeks.

On 19 October 2000, the counsel of respondent Samsung, V.E. Del Rosario and Partners, filed a Notice of Withdrawal of Appearance with the conformity of respondent Samsung.[14]

For its part, petitioner Real Bank, Inc. filed a Motion To Declare Third-Party defendant Reynaldo Senson in Default.

On 7 March 2001, the trial court issued an Order dated 17 March 2001 requiring both petitioner Real Bank, Inc. and respondent Samsung to appear in a mediation proceeding set on 3 April 2001.[15] This Order of the trial court was sent to respondent Samsung's former counsel, V.E. Del Rosario and Partners which had at that time already filed a notice of withdrawal of appearance.[16]

The mediation proceedings took place as scheduled on 3 April 2001 and Mediator Tammy Ann C. Reyes, who handled the mediation proceedings submitted her report to the Court stating therein that no action was taken on the case referred for mediation because respondent Samsung failed to appear.[17]

On 4 June 2001, the new counsel of respondent Samsung (Ortega, Del Castillo, Bacorro, Odulio, Calma and Carbonell) entered its appearance. This was filed and received by the court on 6 June 2001.[18]

Subsequently, RTC Branch 9 of Manila, where the case was pending was designated as a Family Court. Hence, the case was re-raffled to RTC Judge Marivic Balisi-Umali (Judge Umali) of RTC Branch 20 of Manila.

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[14] *Id.* at 110.

[15] CA *rollo,* p. 247.

[16] *Rollo,* p. 110.

[17] CA *rollo,* p. 251.

[18] *Id.* at 248.

On 5 June 2002, an Order was issued by Judge Umali of Branch 20 dismissing the complaint of respondent Samsung for failure to appear at the mediation conference previously scheduled by the trial judge of Branch 9 in her Order dated 17 March 2001.[19]

The Order of Judge Umali states:

> This is a re-raffled case from Branch 9 of this Court, pursuant to Supreme Court's Resolution A.M. 99-11-07 dated February 1, 2000 and August 22, 2000 designating the Branch as a Family Court.
>
> Perusal of the record reveals that in its order dated March 7, 2001, the Court referred the case for mediation, per Sec. 29, Rule 18, 1997 Rules on Civil Procedure and the Guidelines of the Supreme Court dated November 16, 1999. On April 3, 2001, Mediator Tammy Ann C. Reyes, who handled the mediation proceedings, submitted her Report to the Court stating therein that no action was taken for the case referred for mediation because the plaintiff failed to appear.
>
> Mediation is part of pre-trial, Sec. 5, Rule 18, Rules of Court, explicitly provides that failure of the plaintiff to appear at the pre-trial shall be ground for the dismissal of the action for non-suit.
>
> Premises considered the above-entitled case is hereby DISMISSED for non-suit.[20]

Respondent Samsung's new counsel challenged the Order dated 5 June 2002 in a Motion for Reconsideration alleging that the dismissal is improper and inappropriate as it was not notified of the scheduled mediation conference. Besides, the notice of the scheduled mediation was sent to the previous counsel of respondent Samsung who had already withdrawn and not to the new lawyers.[21]

Judge Umali denied the Motion for Reconsideration of respondent Samsung in her Order dated 2 August 2002.[22]

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[19] *Rollo,* p. 113.

[20] *Id.*

[21] *Id.* at 114.

[22] *Id.* at 126-128.

Respondent Samsung then filed before the Court of Appeals a petition for *certiorari* under Rule 65 of the Rules of Court docketed as CA-G.R. SP No. 73188. The Court of Appeals rendered a decision in favor of respondent Samsung dated 18 August 2006, the *fallo* of which reads:

> WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED**. The Orders dated 5 June 2002 and 2 August 2002 are hereby **REVERSED** and **SET ASIDE**.[23]

The Court of Appeals explained its decision in this wise:

> [R]espondent judge did not even peruse or verify the records of the case. Has she done so, she would have discovered that the former counsel of petitioner to whom she sent the Notice of the order had already withdrawn and that a new counsel for petitioner had already entered their appearance. Likewise, she should have discovered that at that time the Order dated March 7, 2001 was issued by RTC Br. 9, petitioner was no longer holding office at its given address. This fact is clearly indicated in the Order of March 7, 2001 itself. Clearly, therefore, respondent judge committed grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the Order dated June 5, 2002. [24]

Petitioner Real Bank, Inc.'s Motion for Reconsideration was denied by the Court of Appeals in a Resolution dated 13 December 2006.[25]

Hence, this petition.

Petitioner Real Bank, Inc. submits the following issues for our resolution.

**I. WHETHER THE COURT OF APPEALS ERRED IN SETTING ASIDE THE ORDER OF THE TRIAL COURT DISMISSING THE CASE BEFORE IT DUE TO THE FAILURE OF RESPONDENT AND ITS COUNSEL TO ATTEND THE MEDIATION CONFERENCE.**

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[23] *Id.* at 46.

[24] *Id.* at 45.

[25] *Id.* at 34.

**II. WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT WAS NOT NOTIFIED OF THE MEDIATION CONFERENCE.**

**III. WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT THE WITHDRAWAL OF RESPONDENT'S COUNSEL WAS SUFFICIENT NOTWITHSTANDING THE FACT THAT THE SAID WITHDRAWAL WAS NOT APPROVED BY THE TRIAL COURT, AND DESPITE THE FACT THAT AT THE TIME, RESPONDENT HAS NOT YET ENGAGED THE SERVICES OF A NEW COUNSEL.**

**IV. WHETHER THE COURT OF APPEALS ERRED IN NOT FINDING RESPONDENT GUILTY OF NEGLIGENCE IN FAILING TO INQUIRE ABOUT THE STATUS OF ITS CASE AND TO ENGAGE THE SERVICES OF A NEW COUNSEL FOR A PERIOD OF ALMOST EIGHT (8) MONTHS.**[26]

In this petition, it is petitioner Real Bank, Inc.'s position that RTC Branch 20 of Manila acted properly in dismissing Civil Case No. 97-86265 for failure on the part of respondent Samsung to appear on the scheduled mediation conference.

In *Senarlo v. Judge Paderanga*,[27] this Court accentuated that mediation is part of pre-trial and failure of the plaintiff to appear thereat merits sanction on the part of the absent party. This court held:

> A.M. No. 01-10-5-SC-PHILJA dated 16 October 2001, otherwise known as the Second Revised Guidelines for the Implementation of Mediation Proceedings and Section 5, Rule 18 of the Rules of Court grant judges the discretion to dismiss an action for failure of the plaintiff to appear at mediation proceedings.
>
> A.M. No. 01-10-5-SC-PHILJA considers mediation a part of pre-trial and provides sanctions for the absent party:
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> 12. Sanctions.
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> Since mediation is part of Pre-Trial, the trial court shall impose the appropriate sanction including but not limited to censure, reprimand, contempt and such sanctions as are provided under

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[26] *Id.* at 253-254.

[27] A.M. No. RTJ-06-2025, 5 April 2010.

> the Rules of Court for failure to appear for pre-trial, in case any or both of the parties absent himself/themselves, or for abusive conduct during mediation proceedings.

Under Rule 18, Section 5 of the Rules of Court, failure of the plaintiff to appear at pre-trial shall be cause for dismissal of the action:

> Sec. 5. Effect of failure to appear. – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.[28]

However, the ruling in *Senarlo* will not resolve the present case where the basic issue is whether or not respondent's Samsung non-appearance at the mediation proceedings is justifiable from the records.

We sustain the ruling of the Court of Appeals.

Rule 138, Section 26 of the Rules of Court outlines the procedure in case of withdrawal of counsel. It states:

> RULE 138
> Attorneys and Admission to Bar
>
> Sec. 26. *Change of attorneys.* – An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.

Under the first sentence of Section 26, the withdrawal of counsel with the conformity of the client is completed once the same is filed in court. No further action thereon by the court

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[28] *Id.*

is needed other than the mechanical act of the Clerk of Court of entering the name of the new counsel in the docket and of giving written notice thereof to the adverse party.[29]

In this case, it is uncontroverted that the withdrawal of respondent Samsung's original counsel, V.E. Del Rosario and Partners on 19 October 2000, was with the client's consent. Thus, no approval thereof by the trial court was required because a court's approval is indispensable only if the withdrawal is without the client's consent.[30]

It being daylight clear that the withdrawal of respondent Samsung's original counsel was sufficient as the same carried the stamp of approval of the client, the notice of mediation sent to respondent Samsung's original counsel was ineffectual as the same was sent at the time when such counsel had already validly withdrawn its representation. Corollarily, the absence of respondent Samsung during the scheduled mediation conference was excusable and justified. Therefore, the trial court erroneously dismissed Civil Case No. 97-86265.

We cannot sustain petitioner Real Bank, Inc.'s argument that respondent Samsung was negligent in the conduct of its case.

The calendar of hearings document the fact that respondent Samsung has been willing and able to prosecute its case. Except for the lone instance, reasonable as already shown, of absence during the scheduled mediation conference on 3 April 2001, respondent Samsung had, till then, promptly and religiously attended the hearings set by the RTC. In fact, respondent Samsung exhibited diligence and dispatch in prosecuting its case against petitioner Real Bank, Inc. by immediately moving to set the case for pre-trial after it had filed its reply and momently filing a motion for reconsideration of the RTC Order dismissing Civil Case No. 97-86265.

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[29] *Arambulo v. Court of Appeals*, G.R. No. 105818, 17 September 1993, 226 SCRA 589, 597-598.

[30] *Id.* at 597.

The following observation of the Court of Appeals is worth noting:

> As borne by the records, it is [petitioner] [Real Bank, Inc.] which asked for a resetting of the pre-trial twice. On the other hand, the [respondent Samsung] was the one egging and repeatedly requesting Presiding Judge Infante of Br. 9 to set the case for pre-trial. It has reached the point that [respondent Samsung] got exasperated for the unreasonable delay of the judge of RTC, Br. 9 in resolving the incidents pending before her that it was constrained to file a motion for inhibition.[31]

Herein respondent Samsung instituted Civil Case No. 97-86265 before the RTC, to recover the amount it claims to have lost due to the negligence of petitioner Real Bank, Inc., clearly a property right. The substantive right of respondent Samsung to recover a due and demandable obligation cannot be diminished by an unwarranted strictness in the application of a rule of procedure.[32]

In *Calalang v. Court of Appeals*,[33] this Court underscored that unless a party's conduct is so negligent, irresponsible, contumacious or dilatory as to provide substantial grounds for dismissal for non-appearance, the court should consider lesser sanctions which would still amount into achieving the desired end.

In *Bank of the Philippine Islands v. Court of Appeals*,[34] we ruled that in the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules, courts should decide to dispense rather than wield their authority to dismiss.

While not at the fore of this case, it may be stated that the state of the court docket cannot justify injudicious case dismissals. Inconsiderate dismissals, even without prejudice, do not constitute

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[31] *Rollo*, p. 45.

[32] *Gosiaco v. Ching*, G.R. No. 173807, 16 April 2009, 585 SCRA 471, 480.

[33] G.R. No. 103185, 22 January 1993, 217 SCRA 462, 470.

[34] 362 Phil. 362, 369 (1999).

a *panacea* or a solution to the congestion of court dockets; while they lend a deceptive aura of efficiency to records of individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of cases before the court.[35]

Accordingly, the ends of justice and fairness would be best served if the parties in Civil Case No. 97-86265 are given the full opportunity to thresh out the real issues in a full blown trial. Besides, petitioner Real Bank, Inc. would not be prejudiced should the RTC proceed with Civil Case No. 97-86265 as it is not stripped of any affirmative defenses nor deprived of due process of law.[36]

**WHEREFORE,** premises considered, the instant petition is *DENIED* for lack of merit and the Decision of the Court of Appeals in CA-G.R. SP No. 73188 dated 18 August 2006 and the Resolution of the same court dated 13 December 2006 are *AFFIRMED*. This case is ordered *REMANDED* to the RTC Manila, Branch 20 for continuation of proceedings until its conclusion with utmost dispatch.

**SO ORDERED.**

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

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[35] *Anson Trade Center, Inc. v. Pacific Banking Corporation,* G.R. No. 179999, 17 March 2009, 581 SCRA 751, 759.

[36] *Bank of the Philippine Islands v. Dando,* G.R. No. 177456, 4 September 2009, 598 SCRA 378, 387 citing *Polanco v. Cruz,* G.R. No. 182426, 13 February 2009, 579 SCRA 489, 498.

**THIRD DIVISION**

[G.R. No. 177279. October 13, 2010]

**COMMISSIONER OF INTERNAL REVENUE,** *petitioner, vs.* **HON. RAUL M. GONZALEZ, Secretary of Justice, L. M. CAMUS ENGINEERING CORPORATION (represented by LUIS M. CAMUS and LINO D. MENDOZA),** *respondents.*

**SYLLABUS**

**1. TAXATION; TAX EVASION; THE CRIME IS COMPLETE WHEN A FRAUDULENT RETURN IS KNOWINGLY AND WILLFULLY FILED WITH INTENT TO EVADE AND DEFEAT THE TAX; EFFECT THEREOF; CASE AT BAR. —** It is clear that I.S. No. 00-956 involves a separate offense and hence *litis pendentia* is not present considering that the outcome of I.S. No. 00-956 is not determinative of the issue as to whether probable cause exists to charge the private respondents with the crimes of attempt to evade or defeat tax and willful failure to supply correct and accurate information and pay tax defined and penalized under Sections 254 and 255, respectively. For the crime of tax evasion in particular, compliance by the taxpayer with such subpoena, if any had been issued, is irrelevant. As we held in *Ungab v. Cusi, Jr.*, "[t]he crime is complete when the [taxpayer] has x x x knowingly and willfully filed [a] fraudulent [return] with intent to evade and defeat x x x the tax." Thus, respondent Secretary erred in holding that petitioner committed forum shopping when it filed the present criminal complaint during the pendency of its appeal from the City Prosecutor's dismissal of I.S. No. 00-956 involving the act of disobedience to the summons in the course of the preliminary investigation on LMCEC's correct tax liabilities for taxable years 1997, 1998 and 1999.

**2. ID.; ID.; THE LACK OF CONSENT OF THE TAXPAYER UNDER INVESTIGATION DOES NOT IMPLY THAT THE BUREAU OF INTERNAL REVENUE (BIR) OBTAINED THE INFORMATION FROM THIRD PARTIES ILLEGALLY OR THAT THE INFORMATION RECEIVED IS FALSE OR MALICIOUS. —** We have held that the lack of consent of the

taxpayer under investigation does not imply that the BIR obtained the information from third parties illegally or that the information received is false or malicious. Nor does the lack of consent preclude the BIR from assessing deficiency taxes on the taxpayer based on the documents. In the same vein, herein private respondents cannot be allowed to escape criminal prosecution under Sections 254 and 255 of the NIRC by mere imputation of a "fictitious" or disqualified informant under Section 282 simply because other than disclosure of the official registry number of the third party "informer," the Bureau insisted on maintaining the confidentiality of the identity and personal circumstances of said "informer."

**3. ID.; NOTICE OF ASSESSMENT; DEFINED AND CONSTRUED; CONTENTS THEREOF, DISCUSSED. —** A notice of assessment is: [A] declaration of deficiency taxes issued to a [t]axpayer who fails to respond to a Pre-Assessment Notice (PAN) within the prescribed period of time, or whose reply to the PAN was found to be without merit. The Notice of Assessment shall inform the [t]axpayer of this fact, and that the report of investigation submitted by the Revenue Officer conducting the audit shall be given due course. The formal letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall **state the fact, the law, rules and regulations or jurisprudence on which the assessment is based, otherwise the formal letter of demand and the notice of assessment shall be void**. As it is, the formality of a control number in the assessment notice is not a requirement for its validity but rather the contents thereof which should inform the taxpayer of the declaration of deficiency tax against said taxpayer. Both the formal letter of demand and the notice of assessment shall be void if the former failed to state the fact, the law, rules and regulations or jurisprudence on which the assessment is based, which is a mandatory requirement under Section 228 of the NIRC. Section 228 of the NIRC provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void. To implement the provisions of Section 228 of the NIRC, RR No. 12-99 was enacted. Section 3.1.4 of the revenue regulation reads: 3.1.4. *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency**

**tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void.** The same shall be sent to the taxpayer only by registered mail or by personal delivery. x x x.

**4. ID.; TAX AMNESTY, DEFINED; THE TERMS OF THE AMNESTY LIKE THAT OF A TAX EXEMPTION MUST BE CONSTRUED STRICTLY AGAINST THE TAXPAYER AND LIBERALLY IN FAVOR OF THE TAXING AUTHORITY; APPLICATION TO VOLUNTARY ASSESSMENT PROGRAM (VAP) IN CASE AT BAR. —** Tax amnesty is a general pardon to taxpayers who want to start a clean tax slate. It also gives the government a chance to collect uncollected tax from tax evaders without having to go through the tedious process of a tax case. Even assuming *arguendo* that the issuance of RR No. 2-99 is in the nature of tax amnesty, it bears noting that a tax amnesty, much like a tax exemption, is never favored nor presumed in law and if granted by statute, the terms of the amnesty like that of a tax exemption must be construed strictly against the taxpayer and liberally in favor of the taxing authority. For the same reason, the availment by LMCEC of VAP under RR No. 8-2001 as amended by RR No. 10-2001, through payment supposedly made in October 29, 2001 before the said program ended on October 31, 2001, did not amount to settlement of its assessed tax deficiencies for the period 1997 to 1999, nor immunity from prosecution for filing fraudulent return and attempt to evade or defeat tax. As correctly asserted by petitioner, from the express terms of the aforesaid revenue regulations, LMCEC is not qualified to avail of the VAP granting taxpayers the privilege of *last priority in the audit and investigation* of all internal revenue taxes for the taxable year 2000 and all prior years under certain conditions, considering that *first*, it was issued a PAN on *February 19, 2001*, and *second*, it was the subject of investigation as a result of verified information filed by a Tax Informer under Section 282 of the NIRC duly recorded in the BIR Official Registry as Confidential Information (CI) No. 29-2000 even prior to the issuance of the PAN. x x x Given the explicit conditions for the grant of immunity from audit under RR No. 2-99, RR No. 8-2001 and RR No. 10-2001, we hold that respondent Secretary gravely erred in declaring that petitioner is now estopped from assessing any tax deficiency against LMCEC after issuance of the aforementioned documents of

immunity from audit/investigation and settlement of tax liabilities. It is axiomatic that the State can never be in estoppel, and this is particularly true in matters involving taxation. The errors of certain administrative officers should never be allowed to jeopardize the government's financial position.

**5. ID.; TAX ASSESSMENTS; ASSESSMENT MAY BE PROTESTED BY FILING A REQUEST FOR RECONSIDERATION OR REINVESTIGATION WITHIN 30 DAYS FROM RECEIPT OF THE ASSESSMENT BY THE TAXPAYER; EFFECT OF FAILURE; CASE AT BAR. —** Tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise. We have held that a taxpayer's failure to file a petition for review with the Court of Tax Appeals within the statutory period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess. Indeed, any objection against the assessment should have been pursued following the avenue paved in Section 229 (now Section 228) of the NIRC on protests on assessments of internal revenue taxes. Records bear out that the assessment notice and Formal Letter of Demand dated August 7, 2002 were duly served on LMCEC on October 1, 2002. Private respondents did not file a motion for reconsideration of the said assessment notice and formal demand; neither did they appeal to the Court of Tax Appeals. Section 228 of the NIRC provides the remedy to dispute a tax assessment within a certain period of time. It states that an assessment may be protested by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment by the taxpayer. No such administrative protest was filed by private respondents seeking reconsideration of the August 7, 2002 assessment notice and formal letter of demand. Private respondents cannot belatedly assail the said assessment, which they allowed to lapse into finality, by raising issues as to its validity and correctness during the preliminary investigation after the BIR has referred the matter for prosecution under Sections 254 and 255 of the NIRC. x x x The determination of probable cause is part of the discretion granted to the investigating prosecutor and ultimately, the Secretary of Justice. However, this Court and the CA possess the power to review findings of prosecutors in preliminary

investigations. Although policy considerations call for the widest latitude of deference to the prosecutor's findings, courts should never shirk from exercising their power, when the circumstances warrant, to determine whether the prosecutor's findings are supported by the facts, or by the law. In so doing, courts do not act as prosecutors but as organs of the judiciary, exercising their mandate under the Constitution, relevant statutes, and remedial rules to settle cases and controversies. Clearly, the power of the Secretary of Justice to review does not preclude this Court and the CA from intervening and exercising our own powers of review with respect to the DOJ's findings, such as in the exceptional case in which grave abuse of discretion is committed, as when a clear sufficiency or insufficiency of evidence to support a finding of probable cause is ignored.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioner.
*Orioste Lim & Calderon Law Offices* for private respondent.

**D E C I S I O N**

**VILLARAMA, JR., *J.*:**

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated October 31, 2006 and Resolution[2] dated March 6, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 93387 which affirmed the Resolution[3] dated December 13, 2005 of respondent Secretary of Justice in I.S. No. 2003-774 for

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[1] CA *rollo*, pp. 130-137. Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Ruben T. Reyes (now a retired member of this Court) and Vicente S.E. Veloso.

[2] *Id.* at 155-156.

[3] *Id.* at 31-41.

violation of Sections 254 and 255 of the National Internal Revenue Code of 1997 (NIRC).

The facts as culled from the records:

Pursuant to Letter of Authority (LA) No. 00009361 dated August 25, 2000 issued by then Commissioner of Internal Revenue (petitioner) Dakila B. Fonacier, Revenue Officers Remedios C. Advincula, Jr., Simplicio V. Cabantac, Jr., Ricardo L. Suba, Jr. and Aurelio Agustin T. Zamora supervised by Section Chief Sixto C. Dy, Jr. of the Tax Fraud Division (TFD), National Office, conducted a fraud investigation for all internal revenue taxes to ascertain/determine the tax liabilities of respondent L. M. Camus Engineering Corporation (LMCEC) for the taxable years 1997, 1998 and 1999.[4] The audit and investigation against LMCEC was precipitated by the information provided by an "informer" that LMCEC had substantial underdeclared income for the said period. For failure to comply with the subpoena *duces tecum* issued in connection with the tax fraud investigation, a criminal complaint was instituted by the Bureau of Internal Revenue (BIR) against LMCEC on January 19, 2001 for violation of Section 266 of the NIRC (I.S. No. 00-956 of the Office of the City Prosecutor of Quezon City).[5]

Based on data obtained from an "informer" and various clients of LMCEC,[6] it was discovered that LMCEC filed fraudulent tax returns with substantial underdeclarations of taxable income for the years 1997, 1998 and 1999. Petitioner thus assessed the company of total deficiency taxes amounting to ₱430,958,005.90 (income tax — ₱318,606,380.19 and value-added tax [VAT] — ₱112,351,625.71) covering the said period. The Preliminary Assessment Notice (PAN) was received by LMCEC on February 22, 2001.[7]

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[4] *Id.* at 49.

[5] *Id.* at 64.

[6] Records, p. 102.

[7] CA *rollo*, pp. 102-104.

LMCEC's alleged underdeclared income was summarized by petitioner as follows:

| Year | Income Per ITR | Income Per Investigation | Undeclared Income | Percentage of Under-declaration |
|---|---|---|---|---|
| 1997 | 96,638,540.00 | 283,412,140.84 | 186,733,600.84 | 193.30% |
| 1998 | 86,793,913.00 | 236,863,236.81 | 150,069,323.81 | 172.90% |
| 1999 | 88,287,792.00 | 251,507,903.13 | 163,220,111.13 | 184.90%[8] |

In view of the above findings, assessment notices together with a formal letter of demand dated August 7, 2002 were sent to LMCEC through personal service on October 1, 2002.[9] Since the company and its representatives refused to receive the said notices and demand letter, the revenue officers resorted to constructive service[10] in accordance with Section 3, Revenue Regulations (RR) No. 12-99.[11]

On May 21, 2003, petitioner, through then Commissioner Guillermo L. Parayno, Jr., referred to the Secretary of Justice for preliminary investigation its complaint against LMCEC, Luis M. Camus and Lino D. Mendoza, the latter two were sued in their capacities as President and Comptroller, respectively. The case was docketed as I.S. No. 2003-774. In the Joint Affidavit executed by the revenue officers who conducted the tax fraud investigation, it was alleged that despite the receipt of the final assessment notice and formal demand letter on October 1, 2002, LMCEC failed and refused to pay the deficiency tax assessment in the total amount of ₱630,164,631.61, inclusive of increments, which had become final and executory as a result of the said

[8] Records, p. 159.

[9] CA *rollo*, pp. 50-60.

[10] Records, pp. 139-140.

[11] Revenue Regulations No. 12-99, Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extrajudicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty, September 6, 1999.

taxpayer's failure to file a protest thereon within the thirty (30)-day reglementary period.[12]

Camus and Mendoza filed a Joint Counter-Affidavit contending that LMCEC cannot be held liable whatsoever for the alleged tax deficiency which had become due and demandable. Considering that the complaint and its annexes all showed that the suit is a simple civil action for collection and not a tax evasion case, the Department of Justice (DOJ) is not the proper forum for BIR's complaint. They also assail as invalid the assessment notices which bear no serial numbers and should be shown to have been validly served by an Affidavit of Constructive Service executed and sworn to by the revenue officers who served the same. As stated in LMCEC's letter-protest dated December 12, 2002 addressed to Revenue District Officer (RDO) Clavelina S. Nacar of RD No. 40, Cubao, Quezon City, the company had already undergone a series of routine examinations for the years 1997, 1998 and 1999; under the NIRC, only one examination of the books of accounts is allowed per taxable year.[13]

LMCEC further averred that it had availed of the Bureau's Tax Amnesty Programs (Economic Recovery Assistance Payment [ERAP] Program and the Voluntary Assessment Program [VAP]) for 1998 and 1999; for 1997, its tax liability was terminated and closed under Letter of Termination[14] dated June 1, 1999 issued by petitioner and signed by the Chief of the Assessment Division.[15] LMCEC claimed it made payments of income tax, VAT and expanded withholding tax (EWT), as follows:

| TAXABLE YEAR | | AMOUNT OF TAXES PAID |
|---|---|---|
| 1997 | Termination Letter Under Letter of Authority No. 174600 Dated November 4, 1998 | EWT - ₱ 6,000.00<br>VAT - 540,605.02<br>IT- 3,000.00 |

[12] CA *rollo*, pp. 42-48.

[13] *Id.* at 61-62.

[14] Records, p. 97.

[15] CA *rollo*, p. 62.

| | | |
|---|---|---|
| 1998 | ERAP Program pursuant to RR #2-99 | WC- 38,404.55<br>VAT- 61,635.40 |
| 1999 | VAP Program pursuant to RR #8-2001 | IT- 878,495.28<br>VAT- 1,324,317.00[16] |

LMCEC argued that petitioner is now estopped from further taking any action against it and its corporate officers concerning the taxable years 1997 to 1999. With the grant of immunity from audit from the company's availment of ERAP and VAP, which have a feature of a tax amnesty, the element of fraud is negated the moment the Bureau accepts the offer of compromise or payment of taxes by the taxpayer. The act of the revenue officers in finding justification under Section 6(B) of the NIRC (Best Evidence Obtainable) is misplaced and unavailing because they were not able to open the books of the company for the second time, after the routine examination, issuance of termination letter and the availment of ERAP and VAP. LMCEC thus maintained that unless there is a prior determination of fraud supported by documents not yet incorporated in the docket of the case, petitioner cannot just issue LAs without first terminating those previously issued. It emphasized the fact that the BIR officers who filed and signed the Affidavit-Complaint in this case were the same ones who appeared as complainants in an earlier case filed against Camus for his alleged "failure to obey summons in violation of Section 5 punishable under Section 266 of the NIRC of 1997" (I.S. No. 00-956 of the Office of the City Prosecutor of Quezon City). After preliminary investigation, said case was dismissed for lack of probable cause in a Resolution issued by the Investigating Prosecutor on May 2, 2001.[17]

LMCEC further asserted that it filed on April 20, 2001 a protest on the PAN issued by petitioner for having no basis in fact and law. However, until now the said protest remains unresolved. As to the alleged informant who purportedly supplied the "confidential information," LMCEC believes that such person is fictitious and his true identity and personality could not be produced. Hence, this case is another form of harassment against the company as

[16] *Id.* at 62-63.

[17] *Id.* at 64.

what had been found by the Office of the City Prosecutor of Quezon City in I.S. No. 00-956. Said case and the present case both have something to do with the audit/examination of LMCEC for taxable years 1997, 1998 and 1999 pursuant to LA No. 00009361.[18]

In the Joint Reply-Affidavit executed by the Bureau's revenue officers, petitioner disagreed with the contention of LMCEC that the complaint filed is not criminal in nature, pointing out that LMCEC and its officers Camus and Mendoza were being charged for the criminal offenses defined and penalized under Sections 254 (Attempt to Evade or Defeat Tax) and 255 (Willful Failure to Pay Tax) of the NIRC. This finds support in Section 205 of the same Code which provides for administrative (distraint, levy, fine, forfeiture, lien, *etc*.) and judicial (criminal or civil action) remedies in order to enforce collection of taxes. Both remedies may be pursued either independently or simultaneously. In this case, the BIR decided to simultaneously pursue both remedies and thus aside from this criminal action, the Bureau also initiated administrative proceedings against LMCEC.[19]

On the lack of control number in the assessment notice, petitioner explained that such is a mere office requirement in the Assessment Service for the purpose of internal control and monitoring; hence, the unnumbered assessment notices should not be interpreted as irregular or anomalous. Petitioner stressed that LMCEC already lost its right to file a protest letter after the lapse of the thirty (30)-day reglementary period. LMCEC's protest-letter dated December 12, 2002 to RDO Clavelina S. Nacar, RD No. 40, Cubao, Quezon City was actually filed only on December 16, 2002, which was disregarded by the petitioner for being filed out of time. Even assuming for the sake of argument that the assessment notices were invalid, petitioner contended that such could not affect the present criminal action,[20] citing the ruling in the landmark case of *Ungab v. Cusi, Jr*.[21]

[18] *Id.* at 65.

[19] Records, pp. 158-159.

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

[21] Nos. L-41919-24, May 30, 1980, 97 SCRA 877.

As to the Letter of Termination signed by Ruth Vivian G. Gandia of the Assessment Division, Revenue Region No. 7, Quezon City, petitioner pointed out that LMCEC failed to mention that the undated Certification issued by RDO Pablo C. Cabreros, Jr. of RD No. 40, Cubao, Quezon City stated that the report of the 1997 Internal Revenue taxes of LMCEC had already been submitted for review and approval of higher authorities. LMCEC also cannot claim as excuse from the reopening of its books of accounts the previous investigations and examinations. Under Section 235 (a), an exception was provided in the rule on once a year audit examination in case of "fraud, irregularity or mistakes, as determined by the Commissioner." Petitioner explained that the distinction between a Regular Audit Examination and Tax Fraud Audit Examination lies in the fact that the former is conducted by the district offices of the Bureau's Regional Offices, the authority emanating from the Regional Director, while the latter is conducted by the TFD of the National Office only when instances of fraud had been determined by the petitioner.[22]

Petitioner further asserted that LMCEC's claim that it was granted immunity from audit when it availed of the VAP and ERAP programs is misleading. LMCEC failed to state that its availment of ERAP under RR No. 2-99 is not a grant of absolute immunity from audit and investigation, aside from the fact that said program was only for income tax and did not cover VAT and withholding tax for the taxable year 1998. As for LMCEC'S availment of VAP in 1999 under RR No. 8-2001 dated August 1, 2001 as amended by RR No. 10-2001 dated September 3, 2001, the company failed to state that it covers only income tax and VAT, and did not include withholding tax. However, LMCEC is not actually entitled to the benefits of VAP under Section 1 (1.1 and 1.2) of RR No. 10-2001. As to the principle of estoppel invoked by LMCEC, estoppel clearly does not lie against the BIR as this involved the exercise of an inherent power by the government to collect taxes.[23]

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[22] Records, pp. 156-157.

[23] *Id.* at 154-155.

Petitioner also pointed out that LMCEC's assertion correlating this case with I.S. No. 00-956 is misleading because said case involves another violation and offense (Sections 5 and 266 of the NIRC). Said case was filed by petitioner due to the failure of LMCEC to submit or present its books of accounts and other accounting records for examination despite the issuance of subpoena *duces tecum* against Camus in his capacity as President of LMCEC. While indeed a Resolution was issued by Asst. City Prosecutor Titus C. Borlas on May 2, 2001 dismissing the complaint, the same is still on appeal and pending resolution by the DOJ. The determination of probable cause in said case is confined to the issue of whether there was already a violation of the NIRC by Camus in not complying with the subpoena *duces tecum* issued by the BIR.[24]

Petitioner contended that precisely the reason for the issuance to the TFD of LA No. 00009361 by the Commissioner is because the latter agreed with the findings of the investigating revenue officers that fraud exists in this case. In the conduct of their investigation, the revenue officers observed the proper procedure under Revenue Memorandum Order (RMO) No. 49-2000 wherein it is required that before the issuance of a Letter of Authority against a particular taxpayer, a preliminary investigation should first be conducted to determine if a *prima facie* case for tax fraud exists. As to the allegedly unresolved protest filed on April 20, 2001 by LMCEC over the PAN, this has been disregarded by the Bureau for being pro forma and having been filed beyond the 15-day reglementary period. A subsequent letter dated April 20, 2001 was filed with the TFD and signed by a certain Juan Ventigan. However, this was disregarded and considered a mere scrap of paper since the said signatory had not shown any prior authorization to represent LMCEC. Even assuming said protest letter was validly filed on behalf of the company, the issuance of a Formal Demand Letter and Assessment Notice through constructive service on October 1, 2002 is deemed an implied denial of the said protest. Lastly, the details regarding the "informer" being confidential, such information is entitled to some degree of

[24] *Id.* at 153-154.

protection, including the identity of the informant against LMCEC.[25]

In their Joint Rejoinder-Affidavit,[26] Camus and Mendoza reiterated their argument that the identity of the alleged informant is crucial to determine if he/she is qualified under Section 282 of the NIRC. Moreover, there was no assessment that has already become final, the validity of its issuance and service has been put in issue being anomalous, irregular and oppressive. It is contended that for criminal prosecution to proceed before assessment, there must be a *prima facie* showing of a willful attempt to evade taxes. As to LMCEC's availment of the VAP and ERAP programs, the certificate of immunity from audit issued to it by the BIR is plain and simple, but petitioner is now saying it has the right to renege with impunity from its undertaking. Though petitioner deems LMCEC not qualified to avail of the benefits of VAP, it must be noted that if it is true that at the time the petitioner filed I.S. No. 00-956 sometime in January 2001 it had already in its custody that "Confidential Information No. 29-2000 dated July 7, 2000," these revenue officers could have rightly filed the instant case and would not resort to filing said criminal complaint for refusal to comply with a subpoena *duces tecum*.

On September 22, 2003, the Chief State Prosecutor issued a Resolution[27] finding no sufficient evidence to establish probable cause against respondents LMCEC, Camus and Mendoza. It was held that since the payments were made by LMCEC under ERAP and VAP pursuant to the provisions of RR Nos. 2-99 and 8-2001 which were offered to taxpayers by the BIR itself, the latter is now in estoppel to insist on the criminal prosecution of the respondent taxpayer. The voluntary payments made thereunder are in the nature of a tax amnesty. The unnumbered assessment notices were found highly irregular and thus their validity is suspect; if the amounts indicated therein were collected, it is uncertain how these will be accounted for and if it would

[25] *Id.* at 152-153.

[26] *Id.* at 114-119.

[27] CA *rollo*, pp. 67-74.

go to the coffers of the government or elsewhere. On the required prior determination of fraud, the Chief State Prosecutor declared that the Office of the City Prosecutor in I.S. No. 00-956 has already squarely ruled that (1) there was no prior determination of fraud, (2) there was indiscriminate issuance of LAs, and (3) the complaint was more of harassment. In view of such findings, any ensuing LA is thus defective and allowing the collection on the assailed assessment notices would already be in the context of a "fishing expedition" or "witch-hunting." Consequently, there is nothing to speak of regarding the finality of assessment notices in the aggregate amount of ₱630,164,631.61.

Petitioner filed a motion for reconsideration which was denied by the Chief State Prosecutor.[28]

Petitioner appealed to respondent Secretary of Justice but the latter denied its petition for review under Resolution dated December 13, 2005.[29]

The Secretary of Justice found that petitioner's claim that there is yet no finality as to LMCEC's payment of its 1997 taxes since the audit report was still pending review by higher authorities, is unsubstantiated and misplaced. It was noted that the Termination Letter issued by the Commissioner on June 1, 1999 is explicit that the matter is considered closed. As for taxable year 1998, respondent Secretary stated that the record shows that LMCEC paid VAT and withholding tax in the amount of ₱61,635.40 and ₱38,404.55, respectively. This eventually gave rise to the issuance of a certificate of immunity from audit for 1998 by the Office of the Commissioner of Internal Revenue. For taxable year 1999, respondent Secretary found that pursuant to earlier LA No. 38633 dated July 4, 2000, LMCEC's 1999 tax liabilities were still pending investigation for which reason LMCEC assailed the subsequent issuance of LA No. 00009361 dated August 25, 2000 calling for a similar investigation of its alleged 1999 tax deficiencies when no final determination has yet been arrived on the earlier LA No. 38633.[30]

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[28] *Id.* at 76-85.

[29] *Id.* at 31-41, 86-101.

[30] *Id.* at 36-37.

On the allegation of fraud, respondent Secretary ruled that petitioner failed to establish the existence of the following circumstances indicating fraud in the settlement of LMCEC's tax liabilities: (1) there must be intentional and substantial understatement of tax liability by the taxpayer; (2) there must be intentional and substantial overstatement of deductions or exemptions; and (3) recurrence of the foregoing circumstances. *First*, petitioner miserably failed to explain why the assessment notices were unnumbered; *second*, the claim that the tax fraud investigation was precipitated by an alleged "informant" has not been corroborated nor was it clearly established, hence there is no other conclusion but that the Bureau engaged in a "fishing expedition"; and *furthermore*, petitioner's course of action is contrary to Section 235 of the NIRC allowing only once in a given taxable year such examination and inspection of the taxpayer's books of accounts and other accounting records. There was no convincing proof presented by petitioner to show that the case of LMCEC falls under the exceptions provided in Section 235. Respondent Secretary duly considered the issuance of Certificate of Immunity from Audit and Letter of Termination dated June 1, 1999 issued to LMCEC.[31]

Anent the earlier case filed against the same taxpayer (I.S. No. 00-956), the Secretary of Justice found petitioner to have engaged in forum shopping in view of the fact that while there is still pending an appeal from the Resolution of the City Prosecutor of Quezon City in said case, petitioner hurriedly filed the instant case, which not only involved the same parties but also similar substantial issues (the joint complaint-affidavit also alleged the issuance of LA No. 00009361 dated August 25, 2000). Clearly, the evidence of *litis pendentia* is present. Finally, respondent Secretary noted that if indeed LMCEC committed fraud in the settlement of its tax liabilities, then at the outset, it should have been discovered by the agents of petitioner, and consequently petitioner should not have issued the Letter of Termination and the Certificate of Immunity From Audit. Petitioner thus should have been more circumspect in the issuance of said documents.[32]

[31] *Id.* at 37-39.

[32] *Id.* at 39-41.

Its motion for reconsideration having been denied, petitioner challenged the ruling of respondent Secretary *via* a *certiorari* petition in the CA.

On October 31, 2006, the CA rendered the assailed decision[33] denying the petition and concurred with the findings and conclusions of respondent Secretary. Petitioner's motion for reconsideration was likewise denied by the appellate court.[34] It appears that entry of judgment was issued by the CA stating that its October 31, 2006 Decision attained finality on March 25, 2007.[35] However, the said entry of judgment was set aside upon manifestation by the petitioner that it has filed a petition for review before this Court subsequent to its receipt of the Resolution dated March 6, 2007 denying petitioner's motion for reconsideration on March 20, 2007.[36]

The petition is anchored on the following grounds:

I.

The Honorable Court of Appeals erroneously sustained the findings of the Secretary of Justice who gravely abused his discretion by dismissing the complaint based on grounds which are not even elements of the offenses charged.

II.

The Honorable Court of Appeals erroneously sustained the findings of the Secretary of Justice who gravely abused his discretion by dismissing petitioner's evidence, contrary to law.

III.

The Honorable Court of Appeals erroneously sustained the findings of the Secretary of Justice who gravely abused his discretion by inquiring into the validity of a Final Assessment Notice which has become final, executory and demandable pursuant to Section 228 of the Tax Code of 1997 for failure of private respondent to file a protest against the same.[37]

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[33] *Id.* at 130-137.

[34] *Id.* at 155-156.

[35] *Id.* at 158.

[36] *Id.* at 206.

[37] *Rollo*, p. 202.

The core issue to be resolved is whether LMCEC and its corporate officers may be prosecuted for violation of Sections 254 (Attempt to Evade or Defeat Tax) and 255 (Willful Failure to Supply Correct and Accurate Information and Pay Tax).

Petitioner filed the criminal complaint against the private respondents for violation of the following provisions of the NIRC, as amended:

SEC. 254. *Attempt to Evade or Defeat Tax.* – Any person who **willfully attempts in any manner to evade or defeat any tax** imposed under this Code **or the payment thereof** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (₱30,000) but not more than One hundred thousand pesos (₱100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: *Provided,* That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply any correct and accurate information, **who willfully fails to pay such tax,** make such return, keep such record, or **supply such correct and accurate information,** or withhold or remit taxes withheld, or refund excess taxes withheld on compensations at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

x x x (Emphasis supplied.)

Respondent Secretary concurred with the Chief State Prosecutor's conclusion that there is insufficient evidence to establish probable cause to charge private respondents under the above provisions, based on the following findings: (1) the tax deficiencies of LMCEC for taxable years 1997, 1998 and 1999 have all been settled or terminated, as in fact LMCEC was issued a Certificate of Immunity and Letter of Termination,

and availed of the ERAP and VAP programs; (2) there was no prior determination of the existence of fraud; (3) the assessment notices are unnumbered, hence irregular and suspect; (4) the books of accounts and other accounting records may be subject to audit examination only once in a given taxable year and there is no proof that the case falls under the exceptions provided in Section 235 of the NIRC; and (5) petitioner committed forum shopping when it filed the instant case even as the earlier criminal complaint (I.S. No. 00-956) dismissed by the City Prosecutor of Quezon City was still pending appeal.

Petitioner argues that with the finality of the assessment due to failure of the private respondents to challenge the same in accordance with Section 228 of the NIRC, respondent Secretary has no jurisdiction and authority to inquire into its validity. Respondent taxpayer is thereby allowed to do indirectly what it cannot do directly – to raise a collateral attack on the assessment when even a direct challenge of the same is legally barred. The rationale for dismissing the complaint on the ground of lack of control number in the assessment notice likewise betrays a lack of awareness of tax laws and jurisprudence, such circumstance not being an element of the offense. Worse, the final, conclusive and undisputable evidence detailing a crime under our taxation laws is swept under the rug so easily on mere conspiracy theories imputed on persons who are not even the subject of the complaint.

We grant the petition.

There is no dispute that prior to the filing of the complaint with the DOJ, the report on the tax fraud investigation conducted on LMCEC disclosed that it made substantial underdeclarations in its income tax returns for 1997, 1998 and 1999. Pursuant to RR No. 12-99,[38] a PAN was sent to and received by LMCEC

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[38] Revenue Regulations No. 12-99, Section 3.1.2.

**SECTION 3. Due process requirement in the issuance of a deficiency tax assessment. –**

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**3.1.2 Preliminary Assessment Notice (PAN).** – If after review and

on February 22, 2001 wherein it was notified of the proposed assessment of deficiency taxes amounting to ₱430,958,005.90 (income tax - ₱318,606,380.19 and VAT - ₱112,351,625.71) covering taxable years 1997, 1998 and 1999.[39] In response to said PAN, LMCEC sent a letter-protest to the TFD, which denied the same on April 12, 2001 for lack of legal and factual basis and also for having been filed beyond the 15-day reglementary period.[40]

As mentioned in the PAN, the revenue officers were not given the opportunity to examine LMCEC's books of accounts and other accounting records because its officers failed to comply with the subpoena *duces tecum* earlier issued, to verify its alleged underdeclarations of income reported by the Bureau's informant under Section 282 of the NIRC. Hence, a criminal complaint was filed by the Bureau against private respondents for violation of Section 266 which provides:

SEC. 266. *Failure to Obey Summons.* – Any person who, being duly summoned to appear to testify, or to appear and produce books of accounts, records, memoranda, or other papers, or to furnish information as required under the pertinent provisions of this Code, neglects to appear or to produce such books of accounts, records, memoranda, or other papers, or to furnish such information, shall, upon conviction, be punished by a fine of not less than Five thousand pesos (₱5,000) but not more than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than two (2) years.

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evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

[39] CA *rollo*, pp. 102-104.

[40] Records, p. 120.

It is clear that I.S. No. 00-956 involves a separate offense and hence *litis pendentia* is not present considering that the outcome of I.S. No. 00-956 is not determinative of the issue as to whether probable cause exists to charge the private respondents with the crimes of attempt to evade or defeat tax and willful failure to supply correct and accurate information and pay tax defined and penalized under Sections 254 and 255, respectively. For the crime of tax evasion in particular, compliance by the taxpayer with such subpoena, if any had been issued, is irrelevant. As we held in *Ungab v. Cusi, Jr.*,[41] "[t]he crime is complete when the [taxpayer] has x x x knowingly and willfully filed [a] fraudulent [return] with intent to evade and defeat x x x the tax." Thus, respondent Secretary erred in holding that petitioner committed forum shopping when it filed the present criminal complaint during the pendency of its appeal from the City Prosecutor's dismissal of I.S. No. 00-956 involving the act of disobedience to the summons in the course of the preliminary investigation on LMCEC's correct tax liabilities for taxable years 1997, 1998 and 1999.

In the Details of Discrepancies attached as Annex B of the PAN,[42] private respondents were already notified that inasmuch as the revenue officers were not given the opportunity to examine LMCEC's books of accounts, accounting records and other documents, said revenue officers gathered information from third parties. Such procedure is authorized under Section 5 of the NIRC, which provides:

> SEC. 5. *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* – In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
>
> (A) To examine any book, paper, record or other data which may be relevant or material to such inquiry;

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[41] *Supra* note 21 at 884, citing *Guzik v. United States*, 54 F2d. 618.

[42] CA *rollo*, p. 104.

(B) To obtain on a regular basis **from any person other than the person whose internal revenue tax liability is subject to audit or investigation**, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the *Bangko Sentral ng Pilipinas* and government-owned or - controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures or consortia and registered partnerships, and their members;

(C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;

(D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; x x x

x x x (Emphasis supplied.)

Private respondents' assertions regarding the qualifications of the "informer" of the Bureau deserve scant consideration. We have held that the lack of consent of the taxpayer under investigation does not imply that the BIR obtained the information from third parties illegally or that the information received is false or malicious. Nor does the lack of consent preclude the BIR from assessing deficiency taxes on the taxpayer based on the documents.[43] In the same vein, herein private respondents cannot be allowed to escape criminal prosecution under Sections 254 and 255 of the NIRC by mere imputation of a "fictitious" or disqualified informant under Section 282 simply because other than disclosure of the official registry number of the third party "informer," the Bureau insisted on maintaining the

[43] *Fitness By Design, Inc. v. Commissioner of Internal Revenue,* G.R. No. 177982, October 17, 2008, 569 SCRA 788, 797.

confidentiality of the identity and personal circumstances of said "informer."

Subsequently, petitioner sent to LMCEC by constructive service allowed under Section 3 of RR No. 12-99, assessment notice and formal demand informing the said taxpayer of the law and the facts on which the assessment is made, as required by Section 228 of the NIRC. Respondent Secretary, however, fully concurred with private respondents' contention that the assessment notices were invalid for being unnumbered and the tax liabilities therein stated have already been settled and/or terminated.

We do not agree.

A notice of assessment is:

> [A] declaration of deficiency taxes issued to a [t]axpayer who fails to respond to a Pre-Assessment Notice (PAN) within the prescribed period of time, or whose reply to the PAN was found to be without merit. The Notice of Assessment shall inform the [t]axpayer of this fact, and that the report of investigation submitted by the Revenue Officer conducting the audit shall be given due course.
>
> The formal letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall **state the fact, the law, rules and regulations or jurisprudence on which the assessment is based, otherwise the formal letter of demand and the notice of assessment shall be void**.[44]

As it is, the formality of a control number in the assessment notice is not a requirement for its validity but rather the contents thereof which should inform the taxpayer of the declaration of deficiency tax against said taxpayer. Both the formal letter of demand and the notice of assessment shall be void if the former failed to state the fact, the law, rules and regulations or jurisprudence on which the assessment is based, which is a mandatory requirement under Section 228 of the NIRC.

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[44] *Commissioner of Internal Revenue v. Enron Subic Power Corporation,* G.R. No. 166387, January 19, 2009, 576 SCRA 212, 216, citing *http://www.bir.gov.ph/taxpayerrights/taxpayerrights.htm.*

Section 228 of the NIRC provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void. To implement the provisions of Section 228 of the NIRC, RR No. 12-99 was enacted. Section 3.1.4 of the revenue regulation reads:

> 3.1.4. *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void.** The same shall be sent to the taxpayer only by registered mail or by personal delivery. x x x.[45] (Emphasis supplied.)

The Formal Letter of Demand dated August 7, 2002 contains not only a detailed computation of LMCEC's tax deficiencies but also details of the specified discrepancies, explaining the legal and factual bases of the assessment. It also reiterated that in the absence of accounting records and other documents necessary for the proper determination of the company's internal revenue tax liabilities, the investigating revenue officers resorted to the "Best Evidence Obtainable" as provided in Section 6(B) of the NIRC (third party information) and in accordance with the procedure laid down in RMC No. 23-2000 dated November 27, 2000. Annex "A" of the Formal Letter of Demand thus stated:

> Thus, to verify the validity of the information previously provided by the informant, the assigned revenue officers resorted to third party information. Pursuant to Section 5(B) of the NIRC of 1997, access letters requesting for information and the submission of certain documents (*i.e.*, Certificate of Income Tax Withheld at Source and/or Alphabetical List showing the income payments made to L.M. Camus Engineering Corporation for the taxable years 1997 to 1999) were sent to the various clients of the subject corporation, including but not limited to the following:

[45] *Id.*; See also *Commissioner of Internal Revenue v. Reyes,* G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 382.

1. Ayala Land Inc.
2. Filinvest Alabang Inc.
3. D.M. Consunji, Inc.
4. SM Prime Holdings, Inc.
5. Alabang Commercial Corporation
6. Philam Properties Corporation
7. SM Investments, Inc.
8. Shoemart, Inc.
9. Philippine Securities Corporation
10. Makati Development Corporation

**From the documents gathered and the data obtained therein, the substantial underdeclaration as defined under Section 248(B) of the NIRC of 1997 by your corporation of its income had been confirmed**.

x x x[46] (Emphasis supplied.)

In the same letter, Assistant Commissioner Percival T. Salazar informed private respondents that the estimated tax liabilities arising from LMCEC's underdeclaration amounted to ₱186,773,600.84 in 1997, ₱150,069,323.81 in 1998 and ₱163,220,111.13 in 1999. These figures confirmed that the non-declaration by LMCEC for the taxable years 1997, 1998 and 1999 of an amount exceeding 30% income[47] declared in its return is considered a substantial underdeclaration of income, *which constituted* ***prima facie*** *evidence* of false or fraudulent return under Section 248(B)[48]

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[46] CA *rollo*, p. 60.

[47] *Id.* at 59.

[48] SEC. 248. *Civil Penalties.* –

x x x x x x x x x

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud; *Provided,* That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further,* That *failure to report sales, receipts or income in an*

of the NIRC, as amended.[49]

On the alleged settlement of the assessed tax deficiencies by private respondents, respondent Secretary found the latter's claim as meritorious on the basis of the Certificate of Immunity From Audit issued on December 6, 1999 pursuant to RR No. 2-99 and Letter of Termination dated June 1, 1999 issued by Revenue Region No. 7 Chief of Assessment Division Ruth Vivian G. Gandia. Petitioner, however, clarified that the certificate of immunity from audit covered only income tax for the year 1997 and does not include VAT and withholding taxes, while the Letter of Termination involved tax liabilities for taxable year 1997 (EWT, VAT and income taxes) but which was submitted for review of higher authorities as per the Certification of RD No. 40 District Officer Pablo C. Cabreros, Jr.[50] For 1999, private respondents supposedly availed of the VAP pursuant to RR No. 8-2001.

RR No. 2-99 issued on February 7, 1999 explained in its Policy Statement that considering the scarcity of financial and human resources as well as the time constraints within which the Bureau has to "clean the Bureau's backlog of unaudited tax returns in order to keep updated and be focused with the most current accounts" in preparation for the full implementation of a computerized tax administration, the said revenue regulation was issued "providing for *last priority in audit and investigation* of tax returns" to accomplish the said objective "without, however, compromising the revenue collection that would have been generated from audit and enforcement activities." The program named as "Economic Recovery Assistance Payment (ERAP) Program" granted immunity from audit and investigation of income tax, VAT and percentage tax returns for 1998. It

*amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions,* as mentioned herein.

[49] See *Santos v. People,* G.R. No. 173176, August 26, 2008, 563 SCRA 341, 347.

[50] Records, p. 138.

expressly excluded withholding tax returns (whether for income, VAT, or percentage tax purposes). Since such immunity from audit and investigation does not preclude the collection of revenues generated from audit and enforcement activities, it follows that the Bureau is likewise not barred from collecting any tax deficiency discovered as a result of tax fraud investigations. Respondent Secretary's opinion that RR No. 2-99 contains the feature of a tax amnesty is thus misplaced.

Tax amnesty is a general pardon to taxpayers who want to start a clean tax slate. It also gives the government a chance to collect uncollected tax from tax evaders without having to go through the tedious process of a tax case.[51] Even assuming *arguendo* that the issuance of RR No. 2-99 is in the nature of tax amnesty, it bears noting that a tax amnesty, much like a tax exemption, is never favored nor presumed in law and if granted by statute, the terms of the amnesty like that of a tax exemption must be construed strictly against the taxpayer and liberally in favor of the taxing authority.[52]

For the same reason, the availment by LMCEC of VAP under RR No. 8-2001 as amended by RR No. 10-2001, through payment supposedly made in October 29, 2001 before the said program ended on October 31, 2001, did not amount to settlement of its assessed tax deficiencies for the period 1997 to 1999, nor immunity from prosecution for filing fraudulent return and attempt to evade or defeat tax. As correctly asserted by petitioner, from the express terms of the aforesaid revenue regulations, LMCEC is not qualified to avail of the VAP granting taxpayers the privilege of *last priority in the audit and investigation* of all internal revenue taxes for the taxable year 2000 and all prior years under certain conditions, considering

[51] *Bañas, Jr. v. Court of Appeals*, G.R. No. 102967, February 10, 2000, 325 SCRA 259, 273.

[52] *Id.* at 274, citing *People v. Castañeda, Jr.*, No. L-46881, September 15, 1988, 165 SCRA 327, 341 and *Commissioner of Internal Revenue v. Guerrero*, No. L-20942, September 22, 1967, 21 SCRA 180. See also *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 170574, January 30, 2009, 577 SCRA 366, 392.

that *first*, it was issued a PAN on *February 19, 2001*, and *second*, it was the subject of investigation as a result of verified information filed by a Tax Informer under Section 282 of the NIRC duly recorded in the BIR Official Registry as Confidential Information (CI) No. 29-2000[53] even prior to the issuance of the PAN.

Section 1 of RR No. 8-2001 provides:

**SECTION 1. COVERAGE.** – x x x

Any person, natural or juridical, including estates and trusts, liable to pay any of the above-cited internal revenue taxes for the above specified period/s who, due to inadvertence or otherwise, erroneously paid his internal revenue tax liabilities or failed to file tax return/ pay taxes may avail of the Voluntary Assessment Program (VAP), **except those falling under any of the following instances:**

1.1 **Those covered by a Preliminary Assessment Notice (PAN),** Final Assessment Notice (FAN), or Collection Letter **issued on or before July 31, 2001;** or

1.2 **Persons under investigation as a result of verified information filed by a Tax Informer under Section 282 of the Tax Code of 1997, duly processed and recorded in the BIR Official Registry Book on or before July 31, 2001;**

1.3 Tax fraud cases already filed and pending in courts for adjudication; and

x x x (Emphasis supplied.)

Moreover, private respondents cannot invoke LMCEC's availment of VAP to foreclose any subsequent audit of its account books and other accounting records in view of the strong finding of underdeclaration in LMCEC's payment of correct income tax liability by more than 30% as supported by the written report of the TFD detailing the facts and the law on which such finding is based, pursuant to the tax fraud investigation authorized by petitioner under LA No. 00009361. This conclusion finds support in Section 2 of RR No. 8-2001 as amended by RR No. 10-2001 provides:

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[53] *Rollo,* p. 116.

**SEC. 2. TAXPAYER'S BENEFIT FROM AVAILMENT OF THE VAP.** – A taxpayer who has availed of the VAP shall not be audited except upon authorization and approval of the Commissioner of Internal Revenue when there is strong evidence or finding of understatement in the payment of taxpayer's correct tax liability by more than thirty percent (30%) as supported by a written report of the appropriate office detailing the facts and the law on which such finding is based: Provided, however, that any VAP payment should be allowed as tax credit against the deficiency tax due, if any, in case the concerned taxpayer has been subjected to tax audit.

x x x x x x x x x

Given the explicit conditions for the grant of immunity from audit under RR No. 2-99, RR No. 8-2001 and RR No. 10-2001, we hold that respondent Secretary gravely erred in declaring that petitioner is now estopped from assessing any tax deficiency against LMCEC after issuance of the aforementioned documents of immunity from audit/investigation and settlement of tax liabilities. It is axiomatic that the State can never be in estoppel, and this is particularly true in matters involving taxation. The errors of certain administrative officers should never be allowed to jeopardize the government's financial position.[54]

Respondent Secretary's other ground for assailing the course of action taken by petitioner in proceeding with the audit and investigation of LMCEC — the alleged violation of the general rule in Section 235 of the NIRC allowing the examination and inspection of taxpayer's books of accounts and other accounting records only once in a taxable year — is likewise untenable. As correctly pointed out by petitioner, the discovery of substantial underdeclarations of income by LMCEC for taxable years 1997, 1998 and 1999 upon verified information provided by an "informer" under Section 282 of the NIRC, as well as the necessity of obtaining information from third parties to ascertain the correctness of the return filed or evaluation of tax compliance in collecting taxes (as a result of the disobedience to the summons issued by the Bureau against the private respondents), are

[54] *Commissioner of Internal Revenue v. Procter & Gamble PMC*, No. 66838, April 15, 1988, 160 SCRA 560, 565.

circumstances warranting exception from the general rule in Section 235.[55]

As already stated, the substantial underdeclared income in the returns filed by LMCEC for 1997, 1998 and 1999 in amounts equivalent to more than 30% (the computation in the final assessment notice showed underdeclarations of almost 200%) constitutes *prima facie* evidence of fraudulent return under Section 248(B) of the NIRC. Prior to the issuance of the preliminary and final notices of assessment, the revenue officers conducted a preliminary investigation on the information and documents showing substantial understatement of LMCEC's tax liabilities which were provided by the Informer, following the procedure under RMO No. 15-95.[56] Based on the *prima*

[55] SEC. 235. *Preservation of Books of Accounts, and Other Accounting Records.* – All the books of accounts, including the subsidiary books and other accounting records of corporations, partnerships, or persons shall be preserved by them for a period beginning from the last entry in each book until the last day prescribed by Section 203 within which the Commissioner is authorized to make an assessment. The said books and records shall be subject to examination and inspection by internal revenue officers: *Provided*, That for income tax purposes, such examination and inspection shall be made only once in a taxable year, *except in the following cases:*

(a) *Fraud, irregularity or mistakes as determined by the Commissioner*;

x x x x x x x x x

(c) Verification or compliance with withholding tax laws and regulations;

x x x x x x x x x

(e) *In the exercise of the Commissioner's power under Section 5(B) to obtain information from other persons, in which case, another or separate examination and inspection may be made.* x x x

[56] RMO No. 15-95 dated June 9, 1995.

C. PROCEDURE

A Preliminary Investigation must first be conducted to establish the *prima facie* existence of fraud. This shall include the verification of the allegations on the confidential information and/or complaints filed, and the determination of the schemes and extent of fraud perpetrated by the denounced taxpayers.

The Formal Fraud Investigation, which includes the examination of the taxpayers books of accounts through the issuance of Letters of Authority, shall be conducted only after the *prima facie* existence of fraud has been established.

*facie* finding of the existence of fraud, petitioner issued LA No. 00009361 for the TFD to conduct a formal fraud investigation of LMCEC.[57] Consequently, respondent Secretary's ruling that the filing of criminal complaint for violation of Sections 254 and 255 of the NIRC cannot prosper because of lack of prior determination of the existence of fraud, is bereft of factual basis and contradicted by the evidence on record.

Tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.[58] We have held that a taxpayer's failure to file a petition for review with the Court of Tax Appeals within the statutory period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess.[59] Indeed, any objection against the assessment should have been pursued following the avenue paved in Section 229 (now Section 228) of the NIRC on protests on assessments of internal revenue taxes.[60]

Records bear out that the assessment notice and Formal Letter of Demand dated August 7, 2002 were duly served on LMCEC on October 1, 2002. Private respondents did not file

TAX FRAUD DIVISION

1.1. Where indications of fraud have been established in a preliminary investigation, the TFD thru the Assistant Commissioner, Intelligence and Investigation Service (IIS), shall request/recommend the issuances of the corresponding Letter of Authority by the Commissioner which will automatically supersede all previously issued Letters of Authority with respect thereto.

x x x

[57] RMO No. 49-2000, II (2).

[58] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, 522 SCRA 144, 149-150, citing *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005, 454 SCRA 301, 329.

[59] *Id.* at 150, citing Benjamin B. Aban, *Law of Basic Taxation in the Philippines*, Revised Edition (1997), p. 247.

[60] *Marcos II v. Court of Appeals*, G.R. No. 120880, June 5, 1997, 273 SCRA 47, 65.

a motion for reconsideration of the said assessment notice and formal demand; neither did they appeal to the Court of Tax Appeals. Section 228 of the NIRC[61] provides the remedy to dispute a tax assessment within a certain period of time. It states that an assessment may be protested by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment by the taxpayer. No such administrative protest was filed by private respondents seeking reconsideration of the August 7, 2002 assessment notice and formal letter of demand. Private respondents cannot belatedly assail the said assessment, which they allowed to lapse into finality, by raising issues as to its validity and correctness during the preliminary investigation after the BIR has referred the matter for prosecution under Sections 254 and 255 of the NIRC.

As we held in *Marcos II v. Court of Appeals:*[62]

> It is not the Department of Justice which is the government agency tasked to determine the amount of taxes due upon the subject estate, but the Bureau of Internal Revenue, whose determinations and assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise**. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously**. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment. x x x.

**Moreover, these objections to the assessments should have been raised, considering the ample remedies afforded the taxpayer by**

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[61] Revenue Regulations No. 12-99, Section 3.1.5.

**3.1.5 Disputed Assessment.** — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. x x x

[62] *Supra* note 60, at 66-67.

**the Tax Code, with the Bureau of Internal Revenue and the Court of Tax Appeals,** as described earlier, and cannot be raised now via Petition for *Certiorari*, under the pretext of grave abuse of discretion. The course of action taken by the petitioner reflects his disregard or even repugnance of the established institutions for governance in the scheme of a well-ordered society. **The subject tax assessments having become final, executory and enforceable, the same can no longer be contested by means of a disguised protest.** In the main, *Certiorari* may not be used as a substitute for a lost appeal or remedy. This judicial policy becomes more pronounced in view of the absence of sufficient attack against the actuations of government. (Emphasis supplied.)

The determination of probable cause is part of the discretion granted to the investigating prosecutor and ultimately, the Secretary of Justice. However, this Court and the CA possess the power to review findings of prosecutors in preliminary investigations. Although policy considerations call for the widest latitude of deference to the prosecutor's findings, courts should never shirk from exercising their power, when the circumstances warrant, to determine whether the prosecutor's findings are supported by the facts, or by the law. In so doing, courts do not act as prosecutors but as organs of the judiciary, exercising their mandate under the Constitution, relevant statutes, and remedial rules to settle cases and controversies.[63] Clearly, the power of the Secretary of Justice to review does not preclude this Court and the CA from intervening and exercising our own powers of review with respect to the DOJ's findings, such as in the exceptional case in which grave abuse of discretion is committed, as when a clear sufficiency or insufficiency of evidence to support a finding of probable cause is ignored.[64]

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[63] *Social Security System v. Department of Justice*, G.R. No. 158131, August 8, 2007, 529 SCRA 426, 442, citing *Ladlad v. Velasco*, G.R. Nos. 172070-72, 172074-76 & 175013, June 1, 2007, 523 SCRA 318; *Principio v. Barrientos*, G.R. No. 167025, December 19, 2005, 478 SCRA 639; *Acuña v. Deputy Ombudsman for Luzon*, G.R. No. 144692, January 31, 2005, 450 SCRA 232.

[64] See *Tan v. Ballena*, G.R. No. 168111, July 4, 2008, 557 SCRA 229, 252.

**WHEREFORE,** the petition is *GRANTED*. The Decision dated October 31, 2006 and Resolution dated March 6, 2007 of the Court of Appeals in CA-G.R. SP No. 93387 are hereby *REVERSED* and *SET ASIDE*. The Secretary of Justice is hereby *DIRECTED* to order the Chief State Prosecutor to file before the Regional Trial Court of Quezon City, National Capital Judicial Region, the corresponding Information against L. M. Camus Engineering Corporation, represented by its President Luis M. Camus and Comptroller Lino D. Mendoza, for Violation of Sections 254 and 255 of the National Internal Revenue Code of 1997.

No costs.

**SO ORDERED.**

*Carpio Morales (Chairperson), Brion, Bersamin,* and *Sereno, JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 177881. October 13, 2010]

**EMMANUEL C. VILLANUEVA,** *petitioner, vs.* **CHERDAN LENDING INVESTORS CORPORATION,** *respondent.*

**SYLLABUS**

**1.CIVIL LAW; MORTGAGE; EXTRAJUDICIAL FORECLOSURE OF A REAL ESTATE MORTGAGE; WRIT OF POSSESSION; WHEN MAY BE ISSUED. —** A writ of possession is an order of the court commanding the sheriff to place a person in possession of a real or personal property. It may be issued in an extrajudicial foreclosure of a real estate mortgage under Section 7 of Act 3135, as amended by Act 4118, either 1) within the one-year redemption period, upon the filing of a bond, or 2) after the lapse of the redemption period, without need of a bond or of a separate and independent action.

**2. ID.; ID.; ID.; FORECLOSURE SALE; RIGHTS OF BUYER; EXPLAINED. —** It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed within one year after the registration of the sale. As such, he is entitled to the possession of the property and can demand that he be placed in possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. Time and again, we have held that it is ministerial upon the court to issue a writ of possession after the foreclosure sale and during the period of redemption. Upon the filing of an *ex parte* motion and the approval of the corresponding bond, the court issues the order for a writ of possession. The writ of possession issues as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new TCT in the name of the purchaser. This rule, however, is not without exception. Under Section 33, Rule 39 of the Rules of Court, which is made to apply suppletorily to the extrajudicial foreclosure of real estate mortgages by Section 6, Act 3135, as amended, the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure unless a third party is actually holding the property adversely to the judgment debtor. Section 33 provides: Sec. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given*. If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it. Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same

officer unless a third party is actually holding the property adversely to the judgment obligor. The same issue had been raised in *Bank of the Philippine Islands v. Icot, Development Bank of the Philippines v. Prime Neighborhood Association, Dayot v. Shell Chemical Company (Phils.), Inc.*, and *Philippine National Bank v. Court of Appeals*, and we uniformly held that the obligation of the court to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor. The purchaser's right of possession is recognized only as against the judgment debtor and his successor-in-interest but not against persons whose right of possession is adverse to the latter.

**3. ID.; ID.; ID.; ID.; THE THIRD PARTY MAY BE EJECTED FROM THE PROPERTY ONLY AFTER HE HAS BEEN GIVEN AN OPPORTUNITY TO BE HEARD, CONFORMABLY WITH THE TIME-HONORED PRINCIPLE OF DUE PROCESS; APPLICATION IN CASE AT BAR. —** The third party's possession of the property is legally presumed to be based on a just title, a presumption which may be overcome by the purchaser in a judicial proceeding for recovery of the property. Through such a judicial proceeding, the nature of the adverse possession by the third party may be determined, after such third party is accorded due process and the opportunity to be heard. The third party may be ejected from the property only after he has been given an opportunity to be heard, conformably with the time-honored principle of due process. The Civil Code protects the actual possessor of a property, as Article 433 thereof provides: Art. 433. Actual possession under claim of ownership raises disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property. One who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The "judicial process" could mean no less than an ejectment suit or a reivindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated. The *ex parte* petition for the issuance of a writ of possession filed by respondent, strictly speaking, is not the kind of judicial process contemplated in Article 433 of the Civil Code. Even if the same may be considered a judicial proceeding for the enforcement of one's right of possession as purchaser

in a foreclosure sale, it is not an ordinary suit filed in court, by which one party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong. Unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court where an action for foreclosure is filed before the RTC where the mortgaged property or any part thereof is situated, any property brought within the ambit of Act 3135 is foreclosed by the filing of a petition, not with any court of justice, but with the office of the sheriff of the province where the sale is to be made. As such, a third person in possession of an extrajudicially foreclosed property, who claims a right superior to that of the original mortgagor, is given no opportunity to be heard on his claim. It stands to reason, therefore, that such third person may not be dispossessed on the strength of a mere *ex parte* possessory writ, since to do so would be tantamount to his summary ejectment, in violation of the basic tenets of due process. The Court cannot sanction a procedural shortcut. To enforce the writ against petitioner, an unwitting third party possessor who took no part in the foreclosure proceedings, would amount to the taking of real property without the benefit of proper judicial intervention. Hence, it was not a ministerial duty of the trial court under Act 3135 to issue a writ of possession for the ouster of petitioner from the lot subject of this instant case, particularly in light of the latter's opposition, claim of ownership and rightful possession of the disputed properties.

**APPEARANCES OF COUNSEL**

*Emiliano S. Samson* for petitioner.
*Nimfa E. Silvestre-Pineda* for respondent.

## D E C I S I O N

**NACHURA,* *J.*:**

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the

* In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 28, 2010.

Court of Appeals (CA) Decision[1] dated October 31, 2006 and Resolution[2] dated May 10, 2007 in CA-G.R. SP No. 89910.

The facts of the case are as follows:

Spouses Fortunato and Rachel Peñaredondo (spouses Peñaredondo) obtained from respondent Cherdan Lending Investors Corporation a loan amounting to ₱2.2 million, secured by a real estate mortgage over a parcel of land covered by Transfer Certificate of Title (TCT) No. T-129690. Despite demand, spouses Peñaredondo failed to pay the obligation. Hence, respondent extrajudicially foreclosed the mortgage. At the auction sale, respondent was declared as the highest bidder. A Certificate of Sale was issued and was later registered. Upon the expiration of the redemption period, the title to the property was consolidated and a new title, TCT No. 143284, issued in respondent's name.[3]

On September 28, 2001, respondent filed before the Regional Trial Court (RTC) of Parañaque City, Branch 258, an *Ex-Parte* Petition for Issuance of Writ of Possession for Real Property Covered by Transfer Certificate of Title No. 143284 of the Registry of Deeds for Parañaque City.[4]

In an Order[5] dated January 7, 2002, the RTC granted the petition, the dispositive portion of which reads:

WHEREFORE, viewed in the light of the foregoing, let Writ of Possession issue in favor of the petitioner and against Spouses Fortunato Peñaredondo and Rachel Peñaredondo and all occupant(s), tenant(s), and/or persons claiming rights under them to immediately vacate the premises formerly covered by Transfer Certificate of Title No. 129690 and now covered by Transfer Certificate of Title No. 143284 registered in the name of the petitioner, issued by the

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[1] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Rebecca de Guia-Salvador and Ramon R. Garcia, concurring; *rollo*, pp. 28-37.

[2] *Id.* at 39-40.

[3] CA *rollo*, p. 24.

[4] *Id.* at 21-23.

[5] *Id.* at 24.

Registry of Deeds of Parañaque City and to serve the purpose, the Sheriff of this Court is hereby ordered to put the petitioner in possession thereof or thru its duly authorized representative, with the assistance of the *barangay* officials or local police, if need be.

SO ORDERED.[6]

Accordingly, a writ of possession was issued. Upon service of a copy of the court order, petitioner Emmanuel C. Villanueva moved for the reconsideration of the order and the setting aside of the writ of possession on the ground that he is the owner and is in actual possession of the subject property. He notified the court that he had filed criminal and civil cases relative to the fraudulent transfer of ownership of the subject property from him to the spouses Peñaredondo.[7] For their part, spouses Peñaredondo also filed a separate Motion to Quash the Writ of Possession[8] on two grounds: 1) that there was a pending civil case for the declaration of nullity of mortgage; and 2) that a third party is in adverse possession of the property.

On September 30, 2002, the RTC issued an Order[9] in favor of petitioner, disposing, as follows:

WHEREFORE, premises considered, the Motion for Reconsideration as well as Motion to Set Aside Writ of Possession are GRANTED and the movant is allowed to be in possession of the subject property until after the pending case/s has/have been resolved with finality and the Writ of Possession dated February 11, 2002 is hereby recalled and set aside.

As to The Motion to Quash filed by the respondents/mortgagors, the same is hereby DENIED.

SO ORDERED.[10]

On August 27, 2004, the RTC of Parañaque City, Branch 257, dismissed Civil Case No. 98-0378 for Declaration of Nullity

[6] *Id.*

[7] *Id.* at 25-28.

[8] *Id.* at 29-33.

[9] *Id.* at 47-49.

[10] *Id.* at 49.

of Real Estate Mortgage filed by Fortunato Peñaredondo against respondent.[11] Respondent thereafter filed a Motion for *Alias* Writ of Possession,[12] which was denied[13] on December 20, 2004. On March 8, 2005, respondent's motion for reconsideration was denied for lack of merit.[14]

Aggrieved, respondent instituted a special civil action for *certiorari* before the CA, praying that the RTC Order denying its motion for *alias* writ of possession be reversed and set aside, and that the RTC be directed to issue a writ of possession in favor of respondent against petitioner.[15]

In the assailed Decision dated October 31, 2006, the CA granted respondent's petition, the pertinent portion of which reads:

> WHEREFORE, the petition is **GRANTED**. The assailed *Orders* dated December 20, 2004 and March 8, 2005, both of the Regional Trial Court, Branch 258, Parañaque City are hereby **ANNULLED** and **SET ASIDE.** The trial court is hereby directed to issue an *alias* writ of possession against all those who claim adverse title and rights against petitioner, which should be placed in actual possession of the subject property but without prejudice to the eventual outcome of the cases anent the validity of title thereto.
>
> SO ORDERED.[16]

Citing *PNB v. Sanao Marketing Corporation*[17] and *Ancheta v. Metropolitan Bank and Trust Company, Inc.*,[18] the CA held that the pendency of the case for annulment of the foreclosure proceedings was not a bar to the issuance of the writ of possession.

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[11] *Id.* at 50-63.

[12] *Id.* at 64-67.

[13] *Id.* at 18.

[14] *Id.* at 19-20.

[15] *Id.* at 6-17.

[16] *Rollo*, pp. 36-37.

[17] 503 Phil. 260 (2005).

[18] 507 Phil. 161 (2005).

The CA refused to apply Section 33, Rule 39 of the Rules of Court, which authorizes the giving of possession of the property to the purchaser or last redemptioner unless a third party is actually holding the property adverse to the judgment obligor, ratiocinating that the provision applies only to execution sales and not to extrajudicial foreclosures of real estate mortgage under Act 3135.[19]

Hence, the present petition raising the following issues:

(1) Can the Honorable Court of Appeals require Villanueva to comment on a petition for *certiorari* wherein he is not even pleaded as a party?

(2) Is the petition of Cherdan barred by Court order dated 30 September 2002?

(3) Is Cherdan's petition for *certiorari* filed in the Court of Appeals proper?

(4) Is there a legal obstacle/impediment to place Cherdan in possession of the property? And

(5) Is the decision (Annex "A") and resolution (Annex "B") of the Honorable Court of Appeals in accord with the decisions of the Supreme Court in *Capital Credit Dimension, Inc. v. Chua, 428 SCRA 259, 263 (Apr. 28, 2004); Penson v. Maranan, 491 SCRA 396, 405-406 (June 20, 2006); and Dayot v. Shell Chemical Co. (Phils.), Inc., 525 SCRA 535, 548 (June 26, 2007)*?[20]

The petition is meritorious.

The core issue for resolution is the propriety of the issuance of the writ of possession over the property subject of the foreclosure of the real estate mortgage.

A writ of possession is an order of the court commanding the sheriff to place a person in possession of a real or personal property.[21] It may be issued in an extrajudicial foreclosure of

[19] Entitled "An Act To Regulate the Sale of Property Under Special Powers Inserted In or Annexed To Real-Estate Mortgages," approved on March 6, 1924, and amended by Act 4118.

[20] *Rollo*, pp. 132-133.

[21] *Bank of the Philippine Islands v. Icot*, G.R. No. 168061, October 12, 2009, 603 SCRA 322, 329.

a real estate mortgage under Section 7 of Act 3135, as amended by Act 4118, either 1) within the one-year redemption period, upon the filing of a bond, or 2) after the lapse of the redemption period, without need of a bond or of a separate and independent action.[22]

It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed within one year after the registration of the sale. As such, he is entitled to the possession of the property and can demand that he be placed in possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT.[23] Time and again, we have held that it is ministerial upon the court to issue a writ of possession after the foreclosure sale and during the period of redemption. Upon the filing of an *ex parte* motion and the approval of the corresponding bond, the court issues the order for a writ of possession. The writ of possession issues as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new TCT in the name of the purchaser.[24]

This rule, however, is not without exception. Under Section 33, Rule 39 of the Rules of Court, which is made to apply suppletorily to the extrajudicial foreclosure of real estate mortgages by Section 6, Act 3135, as amended, the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure unless a third party is actually holding the property adversely to the judgment debtor.[25] Section 33 provides:

Sec. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.*

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[22] *Id.* at 329-331.

[23] *China Banking Corporation v. Lozada*, G.R. No. 164919, July 4, 2008, 557 SCRA 177, 196.

[24] *Development Bank of the Philippines v. Prime Neighborhood Association*, G.R. Nos. 175728 & 178914, May 8, 2009, 587 SCRA 582, 594.

[25] *Id.* at 594-595.

If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.

The same issue had been raised in *Bank of the Philippine Islands v. Icot*,[26] *Development Bank of the Philippines v. Prime Neighborhood Association*,[27] *Dayot v. Shell Chemical Company (Phils.), Inc.*,[28] and *Philippine National Bank v. Court of Appeals*,[29] and we uniformly held that the obligation of the court to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor.

The purchaser's right of possession is recognized only as against the judgment debtor and his successor-in-interest but not against persons whose right of possession is adverse to the latter.[30] In this

[26] *Supra* note 21.

[27] *Supra* note 24.

[28] G.R. No. 156542, January 26, 2007, 525 SCRA 535.

[29] 424 Phil. 757 (2002).

[30] *Bank of the Philippine Islands v. Icot, supra* note 21, at 333;

case, petitioner opposed the issuance of the writ of possession on the ground that he is in actual possession of the mortgaged property under a claim of ownership. He explained that his title to the property was cancelled by virtue of a falsified deed of donation executed in favor of spouses Peñaredondo. Because of this falsification, he filed civil and criminal cases against spouses Peñaredondo to nullify the deed of donation and to punish the party responsible for the falsified document. Petitioner's claim that he is in actual possession of the property is not challenged, and he has come to court asserting an ownership right adverse to that of the mortgagors, the spouses Peñaredondo.

The third party's possession of the property is legally presumed to be based on a just title, a presumption which may be overcome by the purchaser in a judicial proceeding for recovery of the property. Through such a judicial proceeding, the nature of the adverse possession by the third party may be determined, after such third party is accorded due process and the opportunity to be heard. The third party may be ejected from the property only after he has been given an opportunity to be heard, conformably with the time-honored principle of due process.[31] The Civil Code protects the actual possessor of a property, as Article 433 thereof provides:

Art. 433. Actual possession under claim of ownership raises disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

One who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The "judicial process" could mean no less than an ejectment suit or a reivindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated.[32]

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*Development Bank of the Philippines v. Prime Neighborhood Association, supra* note 24, at 597.

[31] *Development Bank of the Philippines v. Prime Neighborhood Association, supra*, at 597.

[32] *Dayot v. Shell Chemical Company (Phils.), Inc., supra* note 28, at 547.

The *ex parte* petition for the issuance of a writ of possession filed by respondent, strictly speaking, is not the kind of judicial process contemplated in Article 433 of the Civil Code. Even if the same may be considered a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale, it is not an ordinary suit filed in court, by which one party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.[33]

Unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court where an action for foreclosure is filed before the RTC where the mortgaged property or any part thereof is situated, any property brought within the ambit of Act 3135 is foreclosed by the filing of a petition, not with any court of justice, but with the office of the sheriff of the province where the sale is to be made. As such, a third person in possession of an extrajudicially foreclosed property, who claims a right superior to that of the original mortgagor, is given no opportunity to be heard on his claim. It stands to reason, therefore, that such third person may not be dispossessed on the strength of a mere *ex parte* possessory writ, since to do so would be tantamount to his summary ejectment, in violation of the basic tenets of due process.[34]

The Court cannot sanction a procedural shortcut. To enforce the writ against petitioner, an unwitting third party possessor who took no part in the foreclosure proceedings, would amount to the taking of real property without the benefit of proper judicial intervention.[35] Hence, it was not a ministerial duty of the trial court under Act 3135 to issue a writ of possession for the ouster of petitioner from the lot subject of this instant case, particularly in light of the latter's opposition, claim of ownership and rightful possession of the disputed properties.[36]

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[33] *Id*.

[34] *Id.* at 548-549.

[35] *Id.* at 549.

[36] *Id.* at 550.

In granting respondent's petition, the appellate court cited *Ancheta v. Metropolitan Bank and Trust Company, Inc.*[37] and *PNB v. Sanao Marketing Corporation*.[38]

The invocation of these cases is misplaced.

These cases involved the propriety of the issuance of a writ of possession pending the determination of the validity of the mortgage or foreclosure proceedings filed by the mortgagor or by at least one of the mortgagors who was a party to the foreclosure proceedings. We held then that the pendency of such determination is not a bar to the issuance of the possessory writ as no discretion is left to the issuing judge.

The above-cited cases have different factual milieu which makes them inapplicable to the present case. In *Ancheta* and *PNB*, the oppositors were parties to the mortgage and the foreclosure proceedings; in the present case, the oppositor was a third party who was a stranger to the mortgage and who did not participate in the foreclosure proceedings. Moreover, in *Ancheta* and *PNB*, the oppositors objected to the issuance of the writ because of the pendency of a case for the annulment of the real estate mortgage and the foreclosure proceedings; while petitioner herein objected because he is in actual possession of the foreclosed property and he is claiming the right of ownership adverse to that of the mortgagor, the spouses Peñaredondo.

These factual circumstances in the instant case call for the application not of *Ancheta* and *PNB* but of the other set of cases thoroughly discussed above declaring that the issuance of the possessory writ is not a ministerial duty of the RTC judge.

**WHEREFORE,** premises considered, the petition is hereby *GRANTED*. The Court of Appeals Decision dated October 31, 2006 and Resolution dated May 10, 2007 in CA-G.R. SP No. 89910 are *REVERSED* and *SET ASIDE*. The Orders dated December 20, 2004 and March 8, 2005 of the Regional Trial

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[37] *Supra* note 18.

[38] *Supra* note 17.

Court, Parañaque City, Branch 258 in LRC Case No. 01-0123, are *REINSTATED*.

**SO ORDERED.**

*Velasco, Jr.,*[**] *Leonardo-de Castro,*[***] *Brion,*[****] and *Mendoza, JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 180699. October 13, 2010]

**BANK OF THE PHILIPPINE ISLANDS,** *petitioner, vs.* **LABOR ARBITER RODERICK JOSEPH CALANZA, SHERIFF ENRICO Y. PAREDES, AMELIA ENRIQUEZ, and REMO L. SIA,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT OF COURT; DEFINED. —** Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity. It signifies not only a willful disregard or disobedience of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due

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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 T. Abad per Special Order No. 905 dated October 5, 2010.

[****] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 904 dated October 5, 2010.

administration of justice. It is a defiance of the authority, justice, or dignity of the court which tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice party-litigants or their witnesses during litigation.

**2. ID.; ID.; ID.; POWER TO PUNISH, EXPLAINED.** — The power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and consequently, to the due administration of justice. However, such power should be exercised on the preservative, not on the vindictive, principle. Only occasionally should the court invoke its inherent power in order to retain that respect, without which the administration of justice will falter or fail. Only in cases of clear and contumacious refusal to obey should the power be exercised. Such power, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice.

**3. ID.; ID.; ID.; TO BE CONSIDERED CONTEMPTUOUS, AN ACT MUST BE CLEARLY CONTRARY TO OR PROHIBITED BY THE ORDER OF THE COURT OR TRIBUNAL; NOT PRESENT IN CASE AT BAR.** — [A]s we clearly discussed in *Bago v. National Labor Relations Commission*, while it is true that the reinstatement aspect of the LA decision is immediately executory, the reversal thereof by the NLRC becomes final and executory after ten (10) days from receipt thereof by the parties. That the CA may take cognizance of and resolve a petition for the nullification of the NLRC decision on jurisdictional and due process considerations does not affect the statutory finality of the NLRC decision. It then logically follows that, at the time of the application for the writ — since the Court eventually sustained the NLRC and the CA decisions in G.R. No. 172812 — no issue of payroll reinstatement may be considered at all after the reversal of the LA decision by the NLRC. Still, the erroneous issuance of the writ of execution by LA Calanza can only be deemed grave abuse of discretion which is more properly the subject of a petition for *certiorari* and not a petition for indirect contempt. No one who is called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment. x x x To be considered contemptuous, an act must be clearly contrary to or prohibited by the order of the court or tribunal. A person cannot, for

disobedience, be punished for contempt unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required.

**APPEARANCES OF COUNSEL**

*Alfonso & Associates Law Office* for petitioner.
*Torres Ravina & Sy Law Offic*es for private respondents.

**D E C I S I O N**

**NACHURA,* *J.*:**

This is a Petition for Indirect Contempt filed by petitioner Bank of the Philippine Islands (BPI) against respondents Labor Arbiter Roderick Joseph Calanza (LA Calanza), Sheriff Enrico Y. Paredes (Sheriff Paredes), Amelia Enriquez (Enriquez), and Remo L. Sia (Sia).

The case stemmed from the following facts:

Enriquez and Sia were the branch manager and the assistant branch manager, respectively, of Bacolod-Singcang Branch of petitioner. On September 3, 2003, they were dismissed from employment on grounds of breach of trust and confidence and dishonesty. The following day, they filed separate complaints for illegal dismissal against petitioner before the National Labor Relations Commission (NLRC), Regional Arbitration Branch No. VI, Bacolod City.[1]

After the submission of their respective position papers, Executive LA Danilo C. Acosta rendered a decision on March 29, 2004, finding that Enriquez and Sia had been illegally dismissed from employment. The dispositve portion of LA Acosta's decision reads:

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* In lieu of Associaye Justice Antonio T. carpio per Special iorder No. 898 dated September 28, 2010.

[1] *Enriquez v. Bank of the Philippine Islands*, G.R. No. 172812, February 12, 2008, 544 SCRA 590, 596-597.

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. DECLARING that complainants were illegally dismissed by respondents;

2. ORDERING respondents to reinstate complainants to their former position without loss of seniority rights and to pay them their corresponding full back wages inclusive of allowances and other benefits as computed, in the sum of Pesos: **ONE MILLION ONE HUNDRED SEVENTY-THREE THOUSAND, FOUR HUNDRED THIRTY-FOUR AND 50/100 ONLY (₱1,173,434.50).**[2]

Pursuant to the aforesaid decision, Enriquez and Sia were reinstated in petitioner's payroll.[3]

Petitioner appealed to the NLRC. The NLRC ruled that petitioner had just cause to terminate Enriquez and Sia. Hence, it reversed and set aside the LA decision and, although it dismissed the complaint, it ordered petitioner to give the dismissed employees financial assistance equivalent to one-half month's pay for every year of service.[4] In view of this decision, petitioner stopped the payroll reinstatement.[5]

Enriquez and Sia elevated the matter to the Court of Appeals (CA), but failed to obtain a favorable decision. On November 30, 2005, the appellate court affirmed *in toto* the NLRC decision. The case eventually reached this Court and was docketed as G.R. No. 172812.

During the pendency of the petition before this Court, Enriquez and Sia filed a Motion for Partial Execution[6] of the LA decision dated March 29, 2004. Citing *Roquero v. Philippine Airlines*,[7]

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[2] *Id.* at 597.

[3] *Rollo*, p. 55.

[4] *Enriquez v. Bank of the Philippine Islands*, *supra* note 1, at 598.

[5] *Rollo*, pp. 65-66.

[6] *Id.* at 64-70.

[7] 449 Phil. 437 (2003).

they claimed that the reinstatement aspect of the LA decision was immediately executory during the entire period that the case was on appeal.

In an Order[8] dated October 13, 2007, LA Calanza granted Enriquez and Sia's motion despite the opposition of petitioner. He opined that so long as there is no finality yet of the decision reversing a ruling of the lower tribunal (in this case, the LA) awarding reinstatement, the same should be enforced. Considering that the case was then pending before this Court, he sustained Enriquez and Sia's claim, applying the cases of *Roquero* and *Air Philippines Corporation v. Zamora*.[9] The corresponding writ of execution was subsequently issued.[10] Upon service of the writ, Sheriff Paredes served on petitioner a notice of sale of a parcel of land owned by petitioner to satisfy its obligation.[11]

Aggrieved, petitioner immediately filed an Urgent Petition for Injunction with prayer for the issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction with the NLRC, Fourth Division, Cebu City. On November 26, 2007, the NLRC issued a TRO.[12]

Disappointed with the conduct of LA Calanza, Sheriff Paredes, Enriquez, and Sia, and in view of the pendency of G.R. No. 172812, entitled *Enriquez v. Bank of the Philippine Islands*,[13] before this Court, petitioner instituted the present petition for indirect contempt. Petitioner avers that LA Calanza's Order granting Enriquez and Sia's motion for partial writ of execution preempts the decision of this Court and eventually results in the payment of Enriquez and Sia's claims which may be contrary to this Court's conclusion. Petitioner adds that respondents obstinately persist in applying jurisprudence which is clearly

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[8] *Rollo*, pp. 27-30.

[9] G.R. No. 148247, August 7, 2006, 498 SCRA 59.

[10] *Rollo*, pp. 31-33.

[11] *Id.* at 7.

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

[13] *Supra* note 1.

inapplicable. Finally, petitioner argues that the execution proceedings were done with undue haste that petitioner was not given an opportunity to submit evidence in its defense to stop the execution. These, according to petitioner, clearly indicate utter disrespect to the Court and are grounds to cite respondents in indirect contempt.

Meanwhile, on February 12, 2008, this Court rendered a Decision in G.R. No. 172812, denying the petition filed by Enriquez and Sia, thereby sustaining the NLRC and the CA's conclusion that Enriquez and Sia were validly dismissed from employment by petitioner.

In a decision[14] dated June 30, 2008, the NLRC, Fourth Division, Cebu City, granted BPI's petition for injunction, the dispositive portion of which is quoted below:

> WHEREFORE, premises considered, the instant petition is hereby GRANTED. The Order dated 12 October 2007 issued by public respondent Labor Arbiter granting the Writ of Execution is declared NULL and VOID. The Writ of Execution issued in pursuance to said Order is likewise declared NULL and VOID. Public respondent Labor Arbiter Roderick Joseph B. Calanza, and any person acting for and in his behalf, is DIRECTED to take no further action in pursuance of the aforementioned Order and Writ of Execution.
>
> The Writ of Preliminary Injunction issued by this Commission dated 12 December 2007 is hereby MADE PERMANENT.
>
> SO ORDERED.[15]

On October 27, 2008, LA Calanza issued an Order[16] considering the case closed and terminated based on Enriquez and Sia's manifestation and motion to dismiss in view of the satisfaction and full payment of their claims.

Hence, the only issue that is left unsettled is whether or not respondents are guilty of indirect contempt.

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[14] *Rollo,* pp. 71-80.

[15] *Id.* at 79.

[16] *Id.* at 81.

Indirect contempt of court is governed by Section 3, Rule 71 of the Rules of Court, which provides:

SEC. 3. *Indirect contempt to be punished after charge and hearing*.-After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him. x x x.

Do the acts of respondents Enriquez and Sia in filing a motion for partial execution; of LA Calanza in granting the writ of execution and applying or not applying established jurisprudence; and of Sheriff Paredes in serving the notice of sale of the real property owned by petitioner fall under the above enumeration?

We answer in the negative.

Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity. It signifies not only a willful disregard or disobedience of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice.[17] It is a defiance of the authority, justice, or dignity of the court which tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice party-litigants or their witnesses during litigation.[18]

The power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and consequently, to the due administration of justice.[19] However, such power should be exercised on the preservative, not on the vindictive, principle. Only occasionally should the court invoke its inherent power in order to retain that respect, without which the administration of justice will falter or fail.[20] Only in cases of clear and contumacious refusal to obey should the power be exercised. Such power, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice.[21]

It is true that, at the time of the filing by Enriquez and Sia of the motion for the partial execution of the LA decision which directed their reinstatement, the decision had already been reversed by the NLRC, and such reversal was affirmed by

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[17] *Lu Ym v. Mahinay*, G.R. No. 169476, June 16, 2006, 491 SCRA 253, 261-262; *Lee v. Regional Trial Court of Quezon City, Br. 85,* 496 Phil. 421, 433 (2005).

[18] *Tokio Marine Malayan Insurance Company Incorporated v. Valdez,* G.R. No. 150107, January 28, 2008, 542 SCRA 455, 467; *Lu Ym v. Mahinay*, *supra*, at 262; *Lee v. Regional Trial Court of Quezon City, Br. 85, supra*, at 433.

[19] *Inonog v. Ibay,* A.M. No. RTC-09-2175, July 28, 2009, 594 SCRA 168, 177-178; *Lu Ym v. Mahinay*, *supra* note 17, at 262.

[20] *Lu Ym v. Mahinay, supra*, at 262.

[21] *Id*.

the CA. The case was then on appeal to this Court via a petition for review on *certiorari* under Rule 45 of the Rules of Court. We find that their motion for partial execution was a bona fide attempt to implement what they might have genuinely believed they were entitled to in accordance with existing laws and jurisprudence.[22] This is especially true in the instant case where the means of livelihood of the dismissed employees was at stake. Any man in such an uncertain and economically threatened condition would be expected to take whatever measures are available to ensure a means of sustenance for himself and his family.[23] Clearly, Enriquez and Sia were merely pursuing a claim which they honestly believed was due them. Their act is far from being contumacious.

On the other hand, LA Calanza, on motion of Enriquez and Sia, issued the writ of execution considering that at the time of the application of the writ, this Court had yet to decide G.R. No. 172812. LA Calanza opined that so long as there is no finality yet of the decision reversing a ruling of the LA awarding reinstatement, the same should be enforced. This was how he interpreted this Court's pronouncements in *Roquero*[24] and *Zamora*;[25] that "even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court."

But as we clearly discussed in *Bago v. National Labor Relations Commission*,[26] while it is true that the reinstatement aspect of the LA decision is immediately executory, the reversal thereof by the NLRC becomes final and executory after ten (10) days from receipt thereof by the parties. That the CA may take cognizance of and resolve a petition for the nullification of the NLRC decision

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[22] See *Bildner v. Ilusorio*, G.R. No. 157384, June 5, 2009, 588 SCRA 378, 394.

[23] *Salvador v. Court of Appeals*, 387 Phil. 453, 461 (2000).

[24] *Supra* note 7.

[25] *Supra* note 9.

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

on jurisdictional and due process considerations does not affect the statutory finality of the NLRC decision. It then logically follows that, at the time of the application for the writ — since the Court eventually sustained the NLRC and the CA decisions in G.R. No. 172812—no issue of payroll reinstatement may be considered at all after the reversal of the LA decision by the NLRC.

Still, the erroneous issuance of the writ of execution by LA Calanza can only be deemed grave abuse of discretion which is more properly the subject of a petition for *certiorari* and not a petition for indirect contempt.[27] No one who is called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[28]

Finally, Sheriff Paredes, in serving the notice of sale, was only performing his duty pursuant to the writ of execution. No matter how erroneous the writ was, it was issued by LA Calanza and was addressed to him as the sheriff, commanding him to collect from petitioner the amount due Enriquez and Sia. In the event he failed to collect the amount, he was authorized to cause the satisfaction of the same on the movable and immovable properties of petitioner not exempt from execution.[29] Thus, any act performed by Sheriff Paredes pursuant to the aforesaid writ cannot be considered contemptuous. At the time of the service of the notice of sale, there was no order from any court or tribunal restraining him from enforcing the writ. It was ministerial duty for him to implement it.

To be considered contemptuous, an act must be clearly contrary to or prohibited by the order of the court or tribunal. A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required.[30]

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[27] *Urgent Appeal/Petition For Immediate Suspension & Dismissal of Judge Legaspi*, 453 Phil. 459, 465-466 (2003).

[28] *Id.* at 465.

[29] *Supra* note 10.

[30] *Lu Ym v. Mahinay*, *supra* note 17, at 263-264.

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

**SO ORDERED.**

*Velasco, Jr.,*[**] *Leonardo-de Castro,*[***] *Brion,*[****] and *Mendoza, JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 183404. October 13, 2010]

**BERRIS AGRICULTURAL CO., INC.,** *petitioner, vs.* **NORVY ABYADANG,** *respondent.*

**SYLLABUS**

**1. COMMERCIAL LAW; R.A. NO. 8293 (INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES); BASIC LAW ON TRADEMARK, INFRINGEMENT, AND UNFAIR COMPETITION, EXPLAINED. —** The basic law on trademark, infringement, and unfair competition is Republic Act (R.A.) No. 8293 (Intellectual Property Code of the Philippines), specifically Sections 121 to 170 thereof. It took effect on January 1, 1998. Prior to its effectivity, the applicable law was R.A. No. 166, as amended. Interestingly, R.A. No. 8293 did not expressly repeal in its entirety R.A. No. 166, but merely provided in Section 239.1 that Acts and parts of Acts inconsistent with it were repealed. In other words, only in the

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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. 905 dated October 5, 2010.

[****] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 904 dated October 5, 2010.

instances where a substantial and irreconcilable conflict is found between the provisions of R.A. No. 8293 and of R.A. No. 166 would the provisions of the latter be deemed repealed.

**2. ID.; ID.; TRADEMARK; TERMS DEFINED. —** R.A. No. 8293 defines a "mark" as any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods. It also defines a "collective mark" as any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark. On the other hand, R.A. No. 166 defines a "trademark" as any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by another. A trademark, being a special property, is afforded protection by law. But for one to enjoy this legal protection, legal protection ownership of the trademark should rightly be established.

**3. ID.; ID.; ID.; REGISTRATION THEREOF; EFFECT AND VALUE, CLARIFIED. —** The ownership of a trademark is acquired by its registration and its actual use by the manufacturer or distributor of the goods made available to the purchasing public. Section 122 of R.A. No. 8293 provides that the rights in a mark shall be acquired by means of its valid registration with the Intellectual Property Office (IPO). A certificate of registration of a mark, once issued, constitutes *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. R.A. No. 8293, however, requires the applicant for registration or the registrant to file a declaration of actual use (DAU) of the mark, with evidence to that effect, within three (3) years from the filing of the application for registration; otherwise, the application shall be refused or the mark shall be removed from the register. In other words, the *prima facie* presumption brought about by the registration of a mark may be challenged and overcome, in an appropriate action, by proof of the nullity of the registration or of non-use of the mark, except when excused. Moreover,

the presumption may likewise be defeated by evidence of prior use by another person, *i.e.*, it will controvert a claim of legal appropriation or of ownership based on registration by a subsequent user. This is because a trademark is a creation of use and belongs to one who first used it in trade or commerce. The determination of priority of use of a mark is a question of fact. Adoption of the mark alone does not suffice. One may make advertisements, issue circulars, distribute price lists on certain goods, but these alone will not inure to the claim of ownership of the mark until the goods bearing the mark are sold to the public in the market. Accordingly, receipts, sales invoices, and testimonies of witnesses as customers, or orders of buyers, best prove the actual use of a mark in trade and commerce during a certain period of time.

**4. ID.; ID.; ID.; ID.; JURISPRUDENCE HAS DEVELOPED TESTS TO DETERMINE SIMILARITY AND LIKELIHOOD OF CONFUSION OVER TRADEMARKS TO BE REGISTERED; DOMINANCY TEST DISTINGUISHED FROM HOLISTIC OR TOTALITY TEST. —** According to Section 123.1(d) of R.A. No. 8293, a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor with an earlier filing or priority date, with respect to: (1) the same goods or services; (2) closely related goods or services; or (3) near resemblance of such mark as to likely deceive or cause confusion. In determining similarity and likelihood of confusion, jurisprudence has developed tests—the Dominancy Test and the Holistic or Totality Test. The Dominancy Test focuses on the similarity of the prevalent or dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the purchasing public. Duplication or imitation is not necessary; neither is it required that the mark sought to be registered suggests an effort to imitate. Given more consideration are the aural and visual impressions created by the marks on the buyers of goods, giving little weight to factors like prices, quality, sales outlets, and market segments. In contrast, the Holistic or Totality Test necessitates a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both labels so that the observer may draw conclusion on whether one is confusingly similar to the other.

**5. ID.; ID.; ID.; ID.; PURPOSE, EXPLAINED. —** [T]he protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods. On this matter of particular concern, administrative agencies, such as the IPO, by reason of their special knowledge and expertise over matters falling under their jurisdiction, are in a better position to pass judgment thereon. Thus, their findings of fact in that regard are generally accorded great respect, if not finality by the courts, as long as they are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant. It is not the task of the appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect to sufficiency of evidence.

**APPEARANCES OF COUNSEL**

*Saludo Fernandez Aquino & Taleon Law Offices* for petitioner.

*Frances C. M. Aguindadao* for respondent.

**D E C I S I O N**

**NACHURA,* *J.*:**

This petition for review[1] on *certiorari* under Rule 45 of the Rules of Court seeks the reversal of the Decision dated April 14, 2008[2] and the Resolution dated June 18, 2008[3] of the Court of Appeals (CA) in CA-G.R. SP No. 99928.

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* In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 28, 2010.

[1] *Rollo*, pp. 9-36.

[2] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Rodrigo V. Cosico and Mariflor Punzalan-Castillo, concurring; *id.* at 63-75.

[3] *Id.* at 101-102.

The antecedents—

On January 16, 2004, respondent Norvy A. Abyadang (Abyadang), proprietor of NS Northern Organic Fertilizer, with address at No. 43 Lower QM, Baguio City, filed with the Intellectual Property Office (IPO) a trademark application for the mark "NS D-10 PLUS" for use in connection with Fungicide (Class 5) with active ingredient 80% Mancozeb. The application, under Application Serial No. 4-2004-00450, was given due course and was published in the IPO e-Gazette for opposition on July 28, 2005.

On August 17, 2005, petitioner Berris Agricultural Co., Inc. (Berris), with business address in Barangay Masiit, Calauan, Laguna, filed with the IPO Bureau of Legal Affairs (IPO-BLA) a Verified Notice of Opposition[4] against the mark under application allegedly because "NS D-10 PLUS" is similar and/or confusingly similar to its registered trademark "D-10 80 WP," also used for Fungicide (Class 5) with active ingredient 80% Mancozeb. The opposition was docketed as IPC No. 14-2005-00099.

After an exchange of pleadings, on April 28, 2006, Director Estrellita Beltran-Abelardo (Director Abelardo) of the IPO-BLA issued Decision No. 2006-24[5] (BLA decision), the dispositive portion of which reads—

> WHEREFORE, viewed in the light of all the foregoing, this Bureau finds and so holds that Respondent-Applicant's mark **"NS D-10 PLUS"** is confusingly similar to the Opposer's mark and as such, the opposition is hereby **SUSTAINED**. Consequently, trademark application bearing Serial No. 4-2004-00450 for the mark **"NS D-10 PLUS"** filed on January 16, 2004 by Norvy A. Ab[yada]ng covering the goods fungicide under Class 5 of the International Classification of goods is, as it is hereby, **REJECTED.**
>
> Let the filewrapper of the trademark "NS D-10 PLUS" subject matter under consideration be forwarded to the Administrative, Financial and Human Resources Development Services Bureau (AFHRDSB) for appropriate action in accordance with this Order with a copy to

[4] *Id.* at 104-117.

[5] *Id.* at 118-124.

be furnished the Bureau of Trademark (BOT) for information and to update its records.

SO ORDERED.[6]

Abyadang filed a motion for reconsideration, and Berris, in turn, filed its opposition to the motion.

On August 2, 2006, Director Abelardo issued Resolution No. 2006-09(D)[7] (BLA resolution), denying the motion for reconsideration and disposing as follows —

IN VIEW OF THE FOREGOING, the Motion for Reconsideration filed by the Respondent-Applicant is hereby **DENIED FOR LACK OF MERIT.** Consequently, Decision No. 2006-24 dated April 28, 2006 **STANDS.**

Let the filewrapper of the trademark "NS D-10 PLUS" subject matter under consideration be forwarded to the Bureau of Trademarks for appropriate action in accordance with this Resolution.

SO ORDERED.[8]

Aggrieved, Abyadang filed an appeal on August 22, 2006 with the Office of the Director General, Intellectual Property Philippines (IPPDG), docketed as Appeal No. 14-06-13.

With the filing of the parties' respective memoranda, Director General Adrian S. Cristobal, Jr. of the IPPDG rendered a decision dated July 20, 2007,[9] ruling as follows—

Wherefore, premises considered[,] the appeal is hereby DENIED. Accordingly, the appealed Decision of the Director is hereby AFFIRMED.

Let a copy of this Decision as well as the trademark application and records be furnished and returned to the Director of Bureau of Legal Affairs for appropriate action. Further, let also the Directors of the Bureau of Trademarks, the Administrative, Financial and Human

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[6] *Id.* at 124.

[7] *Id.* at 125-126.

[8] *Id.* at 126.

[9] *Id.* at 127-135.

Resources Development Services Bureau, and the library of the Documentation, Information and Technology Transfer Bureau be furnished a copy of this Decision for information, guidance, and records purposes.

SO ORDERED.[10]

Undeterred, Abyadang filed a petition for review[11] before the CA.

In its Decision dated April 14, 2008, the CA reversed the IPPDG decision. It held—

> In sum, the petition should be granted due to the following reasons: 1) petitioner's mark "NS D-10 PLUS" is not confusingly similar with respondent's trademark "D-10 80 WP"; 2) respondent failed to establish its ownership of the mark "D-10 80 WP" and 3) respondent's trademark registration for "D-10 80 WP" may be cancelled in the present case to avoid multiplicity of suits.
>
> WHEREFORE, the petition is **GRANTED.** The decision dated July 20, 2007 of the IPO Director General in Appeal No. 14-06-13 (IPC No. 14-2005-00099) is **REVERSED** and **SET ASIDE**, and a new one is entered giving due course to petitioner's application for registration of the mark "NS D-10 PLUS," and canceling respondent's trademark registration for "D-10 80 WP."
>
> SO ORDERED.[12]

Berris filed a Motion for Reconsideration, but in its June 18, 2008 Resolution, the CA denied the motion for lack of merit. Hence, this petition anchored on the following arguments—

> I. The Honorable Court of Appeals' finding that there exists no confusing similarity between Petitioner's and respondent's marks is based on misapprehension of facts, surmise and conjecture and not in accord with the Intellectual Property Code and applicable Decisions of this Honorable Court [Supreme Court].

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[10] *Id.* at 134-135.

[11] *Id.* at 37-61.

[12] *Id.* at 74.

II. The Honorable Court of Appeals' Decision reversing and setting aside the technical findings of the Intellectual Property Office even without a finding or, at the very least, an allegation of grave abuse of discretion on the part of said agency is not in accord with law and earlier pronouncements of this Honorable Court [Supreme Court].

III. The Honorable Court of Appeals' Decision ordering the cancellation of herein Petitioner's duly registered and validly existing trademark in the absence of a properly filed Petition for Cancellation before the Intellectual Property Office is not in accord with the Intellectual Property Code and applicable Decisions of this Honorable Court [Supreme Court].[13]

The basic law on trademark, infringement, and unfair competition is Republic Act (R.A.) No. 8293[14] (Intellectual Property Code of the Philippines), specifically Sections 121 to 170 thereof. It took effect on January 1, 1998. Prior to its effectivity, the applicable law was R.A. No. 166,[15] as amended.

Interestingly, R.A. No. 8293 did not expressly repeal in its entirety R.A. No. 166, but merely provided in Section 239.1[16] that Acts and parts of Acts inconsistent with it were repealed. In other words, only in the instances where a substantial and irreconcilable conflict is found between the provisions of R.A. No. 8293 and of R.A. No. 166 would the provisions of the latter be deemed repealed.

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[13] *Id.* at 15.

[14] An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for Its Powers and Functions, and for Other Purposes.

[15] An Act to Provide for the Registration and Protection of Trademarks, Trade Names and Service Marks, Defining Unfair Competition and False Marking and Providing Remedies Against the Same, and for Other Purposes.

[16] Sec. 239. *Repeals*. –

239.1. All Acts and parts of Acts inconsistent herewith, more particularly Republic Act No. 165, as Amended; Republic Act No. 166, as amended; and

R.A. No. 8293 defines a "mark" as any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods.[17] It also defines a "collective mark" as any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark.[18]

On the other hand, R.A. No. 166 defines a "trademark" as any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by another.[19] A trademark, being a special property, is afforded protection by law. But for one to enjoy this legal protection, legal protection ownership of the trademark should rightly be established.

The ownership of a trademark is acquired by its registration and its actual use by the manufacturer or distributor of the goods made available to the purchasing public. Section 122[20] of R.A. No. 8293 provides that the rights in a mark shall be acquired by means of its valid registration with the IPO. A certificate of registration of a mark, once issued, constitutes *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.[21]

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Articles 188 and 189 of the Revised Penal Code; Presidential Decree No. 49, including Presidential Decree No. 285, as amended, are hereby repealed.

[17] Sec. 121.1.

[18] Sec. 12.2.

[19] Sec. 38.

[20] Sec. 122. *How Marks are Acquired.*—The rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law.

[21] R.A. No. 8293, Sec. 138.

R.A. No. 8293, however, requires the applicant for registration or the registrant to file a declaration of actual use (DAU) of the mark, with evidence to that effect, within three (3) years from the filing of the application for registration; otherwise, the application shall be refused or the mark shall be removed from the register.[22] In other words, the *prima facie* presumption brought about by the registration of a mark may be challenged and overcome, in an appropriate action, by proof of the nullity of the registration or of non-use of the mark, except when excused.[23] Moreover, the presumption may likewise be defeated by evidence of prior use by another person, *i.e.*, it will controvert a claim of legal appropriation or of ownership based on registration by a subsequent user. This is because a trademark is a creation of use and belongs to one who first used it in trade or commerce.[24]

The determination of priority of use of a mark is a question of fact. Adoption of the mark alone does not suffice. One may make advertisements, issue circulars, distribute price lists on certain goods, but these alone will not inure to the claim of ownership of the mark until the goods bearing the mark are sold to the public in the market. Accordingly, receipts, sales invoices, and testimonies of witnesses as customers, or orders of buyers, best prove the actual use of a mark in trade and commerce during a certain period of time.[25]

In the instant case, both parties have submitted proof to support their claim of ownership of their respective trademarks.

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[22] R.A. No. 8293, Sec. 124.2.

[23] Sec. 152. *Non-use of a Mark When Excused.*—

152.1. Non-use of a mark may be excused if caused by circumstances arising independently of the will of the trademark owner. Lack of funds shall not excuse non-use of a mark.

[24] Agpalo, R.E. *The Law on Trademark, Infringement and Unfair Competition,* 1st Ed. (2000), pp. 8-11, citing *Sterling Products International, Inc. v. Farbenfabriken Bayer Aktiengesellschaft,* 27 SCRA 1214 (1969) and *Chung Te v. Ng Kian Giab,* 18 SCRA 747 (1966).

[25] Agpalo, R.E., *The Law on Trademark, Infringement and Unfair Competition,* 1st Ed. (2000), pp. 11-12.

Culled from the records, Berris, as oppositor to Abyadang's application for registration of his trademark, presented the following evidence: (1) its trademark application dated November 29, 2002[26] with Application No. 4-2002-0010272; (2) its IPO certificate of registration dated October 25, 2004,[27] with Registration No. 4-2002-010272 and July 8, 2004 as the date of registration; (3) a photocopy of its packaging[28] bearing the mark "D-10 80 WP"; (4) photocopies of its sales invoices and official receipts;[29] and (5) its notarized DAU dated April 23, 2003,[30] stating that the mark was first used on June 20, 2002, and indicating that, as proof of actual use, copies of official receipts or sales invoices of goods using the mark were attached as Annex "B".

On the other hand, Abyadang's proofs consisted of the following: (1) a photocopy of the packaging[31] for his marketed fungicide bearing mark "NS D-10 PLUS"; (2) Abyadang's Affidavit dated February 14, 2006,[32] stating among others that the mark "NS D-10 PLUS" was his own creation derived from: N – for Norvy, his name; S – for Soledad, his wife's name; D – the first letter for December, his birth month; 10 – for October, the 10th month of the year, the month of his business name registration; and PLUS – to connote superior quality; that when he applied for registration, there was nobody applying for a mark similar to "NS D-10 PLUS"; that he did not know of the existence of Berris or any of its products; that "D-10" could not have been associated with Berris because the latter never engaged in any commercial activity to sell "D-10 80 WP" fungicide in the local market; and that he could not have copied Berris' mark because he registered his packaging with the Fertilizer

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[26] CA *rollo*, pp. 149-150.

[27] *Id.* at 69.

[28] *Id.* at 68.

[29] *Id.* at 72-73.

[30] *Id.* at 193-194.

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

[32] *Rollo*, pp. 304-306.

and Pesticide Authority (FPA) ahead of Berris; (3) Certification dated December 19, 2005[33] issued by the FPA, stating that "NS D-10 PLUS" is owned and distributed by NS Northern Organic Fertilizer, registered with the FPA since May 26, 2003, and had been in the market since July 30, 2003; (4) Certification dated October 11, 2005[34] issued by the FPA, stating that, per monitoring among dealers in Region I and in the Cordillera Administrative Region registered with its office, the Regional Officer neither encountered the fungicide with mark "D-10 80 WP" nor did the FPA provincial officers from the same area receive any report as to the presence or sale of Berris' product; (5) Certification dated March 14, 2006[35] issued by the FPA, certifying that all pesticides must be registered with the said office pursuant to Section 9[36] of Presidential Decree (P.D.) No. 1144[37] and Section 1, Article II of FPA Rules and Regulations No. 1, Series of 1977; (6) Certification dated March 16, 2006[38] issued by the FPA, certifying that the pesticide "D-10 80 WP" was registered by Berris on November 12, 2004; and (7) receipts from Sunrise Farm Supply[39] in La Trinidad, Benguet of the sale of Abyadang's goods referred to as "D-10" and "D-10+."

Based on their proffered pieces of evidence, both Berris and Abyadang claim to be the prior user of their respective marks.

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[33] *Id.* at 307.

[34] *Id.* at 303.

[35] CA *rollo*, p. 205.

[36] Sec. 9. *Registration and Licensing.*—No pesticides, fertilizer, or other agricultural chemical shall be exported, imported, manufactured, formulated, stored, distributed, sold or offered for sale, transported, delivered for transportation or used unless it has been duly registered with the FPA or covered by a numbered provisional permit issued by FPA for use in accordance with the conditions as stipulated in the permit. Separate registrations shall be required for each active ingredient and its possible formulations in the case of pesticides or for each fertilizer grade in the case of fertilizer.

[37] Creating The Fertilizer and Pesticide Authority and Abolishing The Fertilizer Industry Authority.

[38] CA *rollo*, p. 204.

[39] *Id.* at 70-71.

We rule in favor of Berris.

Berris was able to establish that it was using its mark "D-10 80 WP" since June 20, 2002, even before it filed for its registration with the IPO on November 29, 2002, as shown by its DAU which was under oath and notarized, bearing the stamp of the Bureau of Trademarks of the IPO on April 25, 2003,[40] and which stated that it had an attachment as Annex "B" sales invoices and official receipts of goods bearing the mark. Indeed, the DAU, being a notarized document, especially when received in due course by the IPO, is evidence of the facts it stated and has the presumption of regularity, entitled to full faith and credit upon its face. Thus, the burden of proof to overcome the presumption of authenticity and due execution lies on the party contesting it, and the rebutting evidence should be clear, strong, and convincing as to preclude all controversy as to the falsity of the certificate.[41] What is more, the DAU is buttressed by the Certification dated April 21, 2006[42] issued by the Bureau of Trademarks that Berris' mark is still valid and existing.

Hence, we cannot subscribe to the contention of Abyadang that Berris' DAU is fraudulent based only on his assumption that Berris could not have legally used the mark in the sale of its goods way back in June 2002 because it registered the product with the FPA only on November 12, 2004. As correctly held by the IPPDG in its decision on Abyadang's appeal, the question of whether or not Berris violated P.D. No. 1144, because it sold its product without prior registration with the FPA, is a distinct and separate matter from the jurisdiction and concern of the IPO. Thus, even a determination of violation by Berris of P.D. No. 1144 would not controvert the fact that it did submit evidence that it had used the mark "D-10 80 WP" earlier than its FPA registration in 2004.

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[40] *Id.* at 14.

[41] *Gutierrez v. Mendoza-Plaza,* G.R. No. 185477, December 4, 2009, 607 SCRA 807, 816-817; *Calma v. Santos*, G.R. No. 161027, June 22, 2009, 590 SCRA 359, 371.

[42] CA *rollo,* pp. 64, 66.

Furthermore, even the FPA Certification dated October 11, 2005, stating that the office had neither encountered nor received reports about the sale of the fungicide "D-10 80 WP" within Region I and the Cordillera Administrative Region, could not negate the fact that Berris was selling its product using that mark in 2002, especially considering that it first traded its goods in Calauan, Laguna, where its business office is located, as stated in the DAU.

Therefore, Berris, as prior user and prior registrant, is the owner of the mark "D-10 80 WP." As such, Berris has in its favor the rights conferred by Section 147 of R.A. No. 8293, which provides—

Sec. 147. *Rights Conferred.*—

147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

147.2. The exclusive right of the owner of a well-known mark defined in Subsection 123.1(e) which is registered in the Philippines, shall extend to goods and services which are not similar to those in respect of which the mark is registered: *Provided*, That use of that mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered mark: *Provided, further,* That the interests of the owner of the registered mark are likely to be damaged by such use.

Now, we confront the question, "Is Abyadang's mark 'NS D-10 PLUS' confusingly similar to that of Berris' 'D-10 80 WP' such that the latter can rightfully prevent the IPO registration of the former?"

We answer in the affirmative.

According to Section 123.1(d) of R.A. No. 8293, a mark cannot be registered if it is identical with a registered mark

belonging to a different proprietor with an earlier filing or priority date, with respect to: (1) the same goods or services; (2) closely related goods or services; or (3) near resemblance of such mark as to likely deceive or cause confusion.

In determining similarity and likelihood of confusion, jurisprudence has developed tests—the Dominancy Test and the Holistic or Totality Test. The Dominancy Test focuses on the similarity of the prevalent or dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the purchasing public. Duplication or imitation is not necessary; neither is it required that the mark sought to be registered suggests an effort to imitate. Given more consideration are the aural and visual impressions created by the marks on the buyers of goods, giving little weight to factors like prices, quality, sales outlets, and market segments.[43]

In contrast, the Holistic or Totality Test necessitates a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both labels so that the observer may draw conclusion on whether one is confusingly similar to the other.[44]

Comparing Berris' mark "D-10 80 WP" with Abyadang's mark "NS D-10 PLUS," as appearing on their respective packages, one cannot but notice that both have a common component which is "D-10." On Berris' package, the "D-10" is written with a bigger font than the "80 WP." Admittedly, the "D-10" is the dominant feature of the mark. The "D-10," being at the beginning of the mark, is what is most remembered of it.

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[43] *Prosource International, Inc. v. Horphag Research Management SA*, G.R. No. 180073, November 25, 2009, 605 SCRA 523, 531; *McDonald's Corporation v. MacJoy Fastfood Corporation*, G.R. No. 166115, February 2, 2007, 514 SCRA 95, 106; *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, 480 Phil. 402, 434 (2004).

[44] *Id.*; *Philip Morris, Inc. v. Fortune Tobacco Corporation*, G.R. No. 158589, June 27, 2006, 493 SCRA 333, 357.

Although, it appears in Berris' certificate of registration in the same font size as the "80 WP," its dominancy in the "D-10 80 WP" mark stands since the difference in the form does not alter its distinctive character.[45]

Applying the Dominancy Test, it cannot be gainsaid that Abyadang's "NS D-10 PLUS" is similar to Berris' "D-10 80 WP," that confusion or mistake is more likely to occur. Undeniably, both marks pertain to the same type of goods – fungicide with 80% Mancozeb as an active ingredient and used for the same group of fruits, crops, vegetables, and ornamental plants, using the same dosage and manner of application. They also belong to the same classification of goods under R.A. No. 8293. Both depictions of "D-10," as found in both marks, are similar in size, such that this portion is what catches the eye of the purchaser. Undeniably, the likelihood of confusion is present.

This likelihood of confusion and mistake is made more manifest when the Holistic Test is applied, taking into consideration the packaging, for both use the same type of material (foil type) and have identical color schemes (red, green, and white); and the marks are both predominantly red in color, with the same phrase "BROAD SPECTRUM FUNGICIDE" written underneath.

Considering these striking similarities, predominantly the "D-10," the buyers of both products, mainly farmers, may be misled into thinking that "NS D-10 PLUS" could be an upgraded formulation of the "D-10 80 WP."

Moreover, notwithstanding the finding of the IPPDG that the "D-10" is a fanciful component of the trademark, created for the sole purpose of functioning as a trademark, and does not give the name, quality, or description of the product for which it is used, nor does it describe the place of origin, such that the degree of exclusiveness given to the mark is closely

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[45] R.A. No. 8293, Sec. 152.2.

Sec. 152.2. The use of the mark in a form different from the form in which it is registered, which does not alter its distinctive character, shall not be a ground for cancellation or removal of the mark and shall not diminish the protection granted to the mark.

restricted,[46] and considering its challenge by Abyadang with respect to the meaning he has given to it, what remains is the fact that Berris is the owner of the mark "D-10 80 WP," inclusive of its dominant feature "D-10," as established by its prior use, and prior registration with the IPO. Therefore, Berris properly opposed and the IPO correctly rejected Abyadang's application for registration of the mark "NS D-10 PLUS."

Verily, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods.[47] On this matter of particular concern, administrative agencies, such as the IPO, by reason of their special knowledge and expertise over matters falling under their jurisdiction, are in a better position to pass judgment thereon. Thus, their findings of fact in that regard are generally accorded great respect, if not finality by the courts, as long as they are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant. It is not the task of the appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect to sufficiency of evidence.[48]

Inasmuch as the ownership of the mark "D-10 80 WP" fittingly belongs to Berris, and because the same should not have been cancelled by the CA, we consider it proper not to belabor anymore the issue of whether cancellation of a registered mark may be done absent a petition for cancellation.

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[46] Agpalo, *supra* note 25, citing *Philippine Refining Co., Inc. v. Ng Sam*, 115 SCRA 472, 476 (1982); *Romero v. Maiden Form Brassiere*, 10 SCRA 556, 561 (1964); and *Masso Hermanos, S.A. v. Director of Patents*, 94 Phil. 136, 138-139 (1953).

[47] *McDonald's Corporation v. MacJoy Fastfood Corporation*, *supra* note 44, at 114, citing *Faberge Inc. v. Intermediate Appellate Court*, 215 SCRA 316, 320 (1992); and *Chuanchow Soy & Canning Co. v. Dir. of Patents and Villapania*, 108 Phil. 833, 836 (1960).

[48] *Amigo Manufacturing, Inc. v. Cluett Peabody Co., Inc.*, 406 Phil. 905, 916 (2001).

**WHEREFORE,** the petition is *GRANTED.* The assailed Decision dated April 14, 2008 and Resolution dated June 18, 2008 of the Court of Appeals in CA-G.R. SP No. 99928 are *REVERSED* and *SET ASIDE.* Accordingly, the Decision No. 2006-24 dated April 28, 2006 and the Resolution No. 2006-09(D) dated August 2, 2006 in IPC No. 14-2005-00099, and the Decision dated July 20, 2007 in Appeal No. 14-06-13 are *REINSTATED.* Costs against respondent.

**SO ORDERED.**

*Velasco, Jr.,*[**] *Leonardo-de Castro,*[***] *Brion,*[****] and *Mendoza, JJ.,* concur.

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**FIRST DIVISION**

[G.R. No. 184036. October 13, 2010]

**PACIFIC REHOUSE CORPORATION, PACIFIC CONCORDE CORPORATION, MIZPAH HOLDINGS, INC., FORUM HOLDINGS CORPORATION, and EAST ASIA OIL COMPANY, INC.,** *petitioners, vs.* **EIB SECURITIES, INC.,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; JURISDICTION; COURTS ACQUIRE JURISDICTION**

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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. 905 dated October 5, 2010.

[****] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 904 dated October 5, 2010.

**OVER A CASE ONLY UPON PAYMENT OF THE PRESCRIBED DOCKET FEE; AMOUNT OF DOCKET FEE CLARIFIED IN CASE AT BAR. —** It is hornbook law that courts acquire jurisdiction over a case only upon payment of the prescribed docket fee. A plain reading of the prayer does not show that petitioners asked for the payment of actual damages of PhP 4.5 million. x x x Since the prayer did not ask for the payment of actual damages of PhP 4.5 million, the clerk of court correctly assessed the amount of PhP 120,758.80 as docket fees based on the total amount of PhP 8 million consisting of PhP 3 million as moral damages, PhP 3 million as exemplary damages, and PhP 2 million as attorney's fees. In disputing the fees paid by petitioners, respondent relies on our ruling in *Manchester*, where we said that "all complaints, petitions, answers and other similar pleadings should specify the amount of damages being prayed for not only in the body of the pleading but also in the prayer, and said damages shall be considered in the assessment of the filing fees in any case." EIB insinuates that petitioners, by alleging the substantial loss of PhP 4.5 million from the sale of the DMCI shares but not specifying the amount in their prayer, circumvented the *Manchester* ruling to evade the payment of the correct filing fees. This postulation is incorrect. It is clear that petitioners demanded the return of the DMCI shares in the prayer of the complaint and NOT the alleged loss in the value of the shares. If the DMCI shares are returned, then no actual damages are suffered by petitioners. A recall of the averment in par. 9 of the complaint shows that the alleged loss of PhP 4.5 million to petitioners resulted from the sale of DMCI shares at PhP 0.24 per share when they acquired it at PhP 0.38 per share. More importantly, the court was proscribed by the *Manchester* ruling from granting actual damages of PhP 4.5 million to petitioners, because precisely the alleged damages were never sought in the prayer. *Ergo*, EIB's attack on the trial court's assumption of jurisdiction must fail.

**2. ID.; ID.; ID.; JUDGMENT ON THE PLEADINGS; WHEN PROPER; APPLICATION IN CASE AT BAR. —** Rule 34 of the Rules of Court provides that "where an answer fails to tender an issue or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading." Judgment on the pleadings is, therefore, based exclusively upon the allegations appearing in the

pleadings of the parties and the annexes, if any, without consideration of any evidence *aliunde*. When what is left are not genuinely issues requiring trial but questions concerning **the proper interpretation of the provisions of some written contract attached to the pleadings**, judgment on the pleadings is proper. x x x Based on the admissions in the pleadings and documents attached, the Court finds that the issues presented by the complaint and the answer can be resolved within the four corners of said pleadings without need to conduct further hearings. As explained by the Court in *Philippine National Bank v. Utility Assurance & Surety Co., Inc.*, **when what remains to be done is the proper interpretation of the contracts or documents attached to the pleadings, then judgment on the pleadings is proper**. In the case at bar, the issue of whether the sale of DMCI shares to effectuate the buy back of the KKP shares is valid can be decided by the trial court based on the SDAA, Notices of Sale, Sales Confirmation Receipts, the letters of the parties, and other appendages to the pleadings in conjunction with the allegations or admissions contained in the pleadings without need of trial. The Makati City RTC is, therefore, correct in issuing the October 18, 2005 Resolution granting the Motion for Judgment on the Pleadings. x x x On the monetary claims by petitioners against EIB, said claims are not a bar to a judgment on the pleadings. While it was averred by petitioners under par. 9 of the complaint that they suffered a loss of PhP 4.5 million from the sale of the DMCI shares, the claim for actual damages was not set up as a relief in the prayer and, therefore, the *Manchester* doctrine precludes such award to petitioners. Anent the claim for moral damages of PhP 3 million, exemplary damages of PhP 3 million, and attorney's fees of PhP 2 million, the claim is not proper in a judgment on the pleadings in the absence of proof. Sans such proof extent on record, the claim for damages is a non-issue. In sum, there are no genuine issues that cannot be determined based on the pleadings. *Ergo*, the assailed October 18, 2005 Resolution of the Makati City RTC granting judgment on the pleadings is in accord with Rule 34 of the Rules of Court and settled jurisprudence.

**3. CIVIL LAW; AGENCY; THE AGENT MUST ACT WITHIN THE SCOPE OF HIS AUTHORITY; VIOLATION IN CASE AT BAR.** — Article 1881 of the Civil Code provides that "the agent must

act within the scope of his authority." Pursuant to the authority given by the principal, the agent is granted the right "to affect the legal relations of his principal by the performance of acts effectuated in accordance with the principal's manifestation of consent." In the case at bar, the scope of authority of EIB as agent of petitioners is "to retain, apply, sell or dispose of all or any of the client's [petitioners'] property," if all or any indebtedness or other obligations of petitioners to EIB are not discharged in full by petitioners "when due or on demand in or towards the payment and discharge of such obligation or liability." The right to sell or dispose of the properties of petitioners by EIB is unequivocally confined to payment of the obligations and liabilities of petitioners to EIB and none other. Thus, when EIB sold the DMCI shares to buy back the KKP shares, it paid the proceeds to the vendees of said shares, the act of which is clearly an obligation to a third party and, hence, is beyond the ambit of its authority as agent. Such act is surely illegal and does not bind petitioners as principals of EIB.

**4. ID.; CONTRACTS; PLEDGE AND MORTGAGE; ELEMENTS; NOT PRESENT IN CASE AT BAR. —** Art. 2085 of the Civil Code provides: Art. 2085. The following requisites are essential to the contracts of pledge and mortgage: (1) That they be constituted to secure the fulfillment of a principal obligation; (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged; (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose. Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property. It is indispensable that the pledgor is the absolute owner of the thing pledged (second element). In the case at bar, the KKP shares were sold to third parties by EIB at PhP 0.14 and, as a result, petitioners lost their right of ownership over the KKP shares. Hence, from the time of the sale, petitioners were no longer the absolute owners of said shares, making the pledge constituted over said KKP shares null and void. Also, it is necessary under Art. 2085 that the person constituting the pledge has the free disposal of his or her property, and in the absence of that free disposal, that he or she be legally authorized for the purpose (third element). This element is absent in the case at bar. Petitioners

no longer have the free disposal of the KKP shares when EIB sold said shares at the stock exchange as they are no longer the owners of the shares. Thus, there was no valid pledge constituted on the KKP shares.

**5. ID.; ID.; PLEDGE; THE THING PLEDGED MUST BE AMPLY AND CLEARLY DESCRIBED AND SPECIFICALLY IDENTIFIED; NOT SATISFIED IN CASE AT BAR. —** The notice of sale, assuming it incorporates the accessory contract of pledge, merely stated "Property" as collateral in addition to KKP shares. This is a blatant violation of Art. 2096, which provides that "a pledge shall not take effect against third persons if description of the thing pledged and the date of the pledge do not appear in a public instrument." The thing pledged must be amply and clearly described and specifically identified. Evidently, the word "Property" is vague, broad, and confusing as to the ownership. Hence, it does not satisfy the prescription under Art. 2096 of the Code. Worse, the notice of sale is not in a public instrument as required by said legal provision; therefore, the pledge on "property" is void and without legal effect. Moreover, the notices of sale must be construed against EIB. Any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it. The DMCI shares which EIB construed to be included within the ambit of the word "property" cannot be considered the thing pledged to secure the buy back of the KKP shares in view of the vagueness of the word "Property" and the non-applicability of the SDAA to the sale of the KKP shares.

**6. ID.; ESTOPPEL; PRINCIPLE OF, CONSTRUED. —** The principle of estoppel rests on the rule that: [W]here a party, by his or her deed or conduct, has induced another to act in particular manner, estoppel effectively bars the former from adopting an inconsistent position, attitude or course of conduct that causes loss or injury to the latter. The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one whom they were directed and who reasonably relied thereon.

**7. ID.; ID.; ELEMENTS; NOT PRESENT IN CASE AT BAR. —** The essential elements of estoppel as related to the party estopped

are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the actual facts. Reliance by respondent EIB on estoppel is misplaced. The first element does not obtain from the factual setting presented by the pleadings, attachments, and admissions. There is no allegation that petitioners performed an act which can be considered as false representation that EIB can sell their DMCI shares to reacquire the KKP shares, or concealed a material fact. Sec. 7 of the SDAA is unequivocal that EIB can only sell the shares of petitioners for payment of any indebtedness to EIB. There was no act or concealment on the part of petitioners that made known or conveyed the impression to EIB that it can sell the DMCI shares of petitioners for the latter's indebtedness or obligation to a third party in contravention of EIB's authority under Sec. 7 of the SDAA. Moreover, the second element is also absent. There was no showing that petitioners authorized EIB to pay a third party from the proceeds of the sale of their DMCI shares. Lastly, on the third element, petitioners had no knowledge of the fact that the proceeds of the sale of DMCI shares were paid to buy back the KPP shares. Reliance of EIB on the sales confirmation receipts issued to petitioners does not help any. The condition printed on said receipts explicitly states that the "securities shall secure [petitioners'] liabilities to e.securities." Even the account statements issued by EIB do not reflect the payment of the proceeds of the sale of DMCI shares owned by petitioners to buy back the KKP shares previously owned by petitioners. All that these accounts show is the crediting of the proceeds of the sale of DMCI shares to petitioners and nothing more. There was no disclosure of the purpose of the sale of the DMCI shares. Clearly, there is no estoppel.

**APPEARANCES OF COUNSEL**

*Mutia Trinidad & Venadas Law Offices* for petitioners.
*Baterina Baterina Casals Lozada & Tiblani* for respondent.

## D E C I S I O N

**VELASCO, JR., *J.*:**

### The Case

Via this Petition for Review on *Certiorari* under Rule 45, petitioners seek reversal of the Decision[1] dated April 11, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 87713 which revoked the October 18, 2005 Resolution,[2] a judgment on the pleadings, of the Regional Trial Court (RTC), Branch 66 in Makati City, in Civil Case No. 05-178 entitled *Pacific Rehouse Corporation, Pacific Concorde Corporation, Mizpah Holdings, Inc., et al. v. EIB Securities, Inc.*, and remanded the case for further proceedings. Also assailed is the CA Resolution[3] dated August 5, 2008 denying petitioners' motion for reconsideration.

Petitioners' initiatory pleading in Civil Case No. 05-178 reveals the following averments:

**COMMON ALLEGATIONS FOR ALL CAUSES OF ACTION**

1. On various dates during the period June 2003 to March 2004, plaintiffs bought 60,790,000 Kuok Properties, Inc. ("KPP") shares of stock through the Philippine Stock Exchange ("PSE"). The KPP shares were acquired by plaintiffs through their broker, defendant EIB.

2. The KPP shares of stock were bought by plaintiffs at an average price of ₱0.22 per share.

3. Also on various dates in July and August 2003, plaintiffs bought/acquired 32,180,000 DMCI shares of stock through the PSE. Of these shares, 16,180,000 were likewise acquired by the plaintiffs through their broker, defendant EIB, while the remaining 16,000,000 DMCI shares were transferred from Westlink Global Equities, Inc.

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[1] *Rollo*, pp. 50-59. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Bienvenido L. Reyes and Vicente Q. Roxas.

[2] *Id.* at 186-190. Penned by Judge Rommel O. Baybay.

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

4. The DMCI shares of stock were bought by plaintiffs at an average price of ₱0.38 per share.

5. On 01 April 2004, plaintiffs and defendant EIB agreed to sell the 60,790,000 KPP shares of plaintiffs to any party for the price of ₱0.14 per share. Attached as Annexes "A" to "A-6" are copies of the notices of sales sent by defendant EIB to the plaintiffs, which bear the conformity of plaintiffs' representative.

6. As agreed by plaintiffs and defendant, the sale of the KPP shares of plaintiffs was made with an option on the part of the plaintiffs to buy back or reacquire the said KPP shares within a period of thirty (30) days from the transaction date, at the buy-back price of ₱0.18 per share (See Annexes "A" to "A-6").

7. When the last day of the 30-day buy back period for the KPP shares came, plaintiff were undecided on whether or not to exercise their option to reacquire said shares. Thus, plaintiffs and defendant EIB agreed that plaintiffs would have an extended period of until 03 June 2004 to exercise their option to buy back/reacquire the KKP shares that had been sold.

8. Eventually, plaintiffs decided not to exercise their option to buy back the KPP shares and did not give any buy-back instruction/s to their broker, defendant EIB.

9. On various dates in June 2004, without plaintiffs' prior knowledge and consent, defendant EIB sold plaintiffs 32,180,000 DMCI shares of stock for an average price of ₱0.24 per share. Defendant EIB sold the DMCI shares of plaintiffs for an average price of only P0.24 per share despite full knowledge by defendant EIB that the sale would result in a substantial loss to the plaintiffs of around P4.5 Million since plaintiffs acquired the DMCI shares at ₱0.38 per share. (cf. Article 1888, Civil Code). Attached Annexes "B" to "B-7" are the Sell Confirmation slips issued by defendant EIB showing the unauthorized sale of plaintiffs' 32,180,000 DMCI shares.

9.1 The proceeds of said DMCI shares sold by defendant EIB without plaintiffs' knowledge and consent were used by defendant EIB to buy back 61,100,000 KPP shares earlier sold by plaintiffs on 01 April 2004. Attached as Annexes "C" to "C-5" are the Buy Confirmation slips issued by defendant showing the unauthorized "buy back" of KPP shares.

9.2 Defendant EIB sold without authority plaintiffs' 32,180,000 DMCI shares and used the proceeds thereof to

buy back 61,000,000 KPP shares because defendant EIB made an unauthorized promise and commitment to the buyer/s of plantiffs' KPP shares in April 2004 that plaintiffs would buy back the KPP shares.

9.3 Plaintiffs learned of the unauthorized sale of their 32,180,000 DMCI shares and the unauthorized "buy back" of 61,000,000 KPP shares only much later. Upon further inquiry, plaintiffs also learned that all throughout their business dealings, defendant EIB had surreptitiously charged and collected from plaintiffs exorbitant interest amounting to thirty percent (30%) of all amounts owing from the plaintiffs.

10. On 05 January 2005, plaintiffs wrote to defendant EIB to demand that their 32,180,000 DMCI shares be transferred to Westlink Global Equities Inc. ("Westlink"). Copies of the demand letters, all dated 05 January 2005, are attached as Annex "D" to "D-4" respectively.

11. Since the 32,180,000 DMCI shares belonging to plaintiffs had already been sold by defendant EIB without plaintiffs' prior knowledge and consent as early as June 2004, defendant EIB could not comply with the demand of plaintiffs as stated in their demand letters dated 05 January 2005.

12. In his letters to the plaintiffs dated 12 January 2005, defendant EIB admitted having sold the 32,180,000 DMCI shares of stock of plaintiffs without the latter's prior knowledge and consent. Copies of defendant EIB's letters to plaintiffs, all dated 12 January 2005, are attached as Annexes "E" to "E-4", respectively.

12.1 Defendant EIB states in its aforesaid letters that it sent statements of account to plaintiffs in July 2004. Defendant EIB claims, albeit erroneously, that since plaintiffs made no exceptions to the statements of account, the sale of plaintiffs' DMCI shares in June 2004 [was] supposedly "validly executed".

13. Hence, this Complaint.

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SECOND CAUSE OF ACTION

17. Plaintiffs replead all of the foregoing allegations.

18. The sale by defendant EIB of the 32,180,000 DMCI shares of plaintiffs was done with malice and fraudulent intent. As such,

defendant should be directed to pay plaintiffs the amount of at least PhP3,000,000.00 as moral damages.[4]

In response, respondent EIB Securities, Inc. (EIB) submitted its Answer which contained the following averments:

ADMISSIONS AND DENIALS:

1. Defendant admits the allegations contained in paragraphs under the heading The Parties. Likewise, defendant admits the allegations contained in paragraph 1.

2. Paragraph 2 of the Complaint is specifically denied, the truth of the matter is that the KPP shares of stock were bought by plaintiffs at an average price of only 18 centavos per share.

3. Paragraph 3 is admitted, qualified, however, that the remaining 16,000,000 DMCI shares of plaintiffs were transferred by Westlink Global Equities, Inc. and other brokerages firms to the defendant primarily to serve as a collateral in the cash account obligations of the plaintiffs to the defendant.

4. Paragraph 4 of the Complaint is specifically denied, the truth of the matter being the DMCI shares of stock were bought by the plaintiffs at an approximate average price of only 25 centavos per share.

5. Defendant admits paragraph 5 of the Complaint insofar as the allegation that plaintiffs and defendant agreed to sell the 60,790,000 KPP share of plaintiffs to any party for the price of 14 centavos per share, qualified, however, by the presence of a provision "Full Cross to Seller" meaning that the Sellers (who are the plaintiffs) have the obligation to buy back or reacquire the shares from the buyers.

6. Defendant specifically denies paragraph 6 of the Complaint, the truth of the matter and as evidenced by the same Notices of Sale (Annex "A" to "A-6" of the Complaint), plaintiffs have no option to buy back or reacquire the said KPP shares, the nature or kind of transaction agreement is Full Cross to seller which is an obligation and not merely an option on the part of the plaintiffs to buy back or reacquire the said KPP shares sold to buyers.

[4] *Id.* at 65-69.

7. Defendant specifically and vehemently denies the allegations of paragraphs 7 and 8 of the Complaint. The truth of the matter is that there was no extension agreed upon by the parties for the plaintiffs to exercise option to buy back/reacquire the Kuok Properties, Inc. shares of stocks (KKP). The Contracts for the sale of KPP shares of stocks as already stated above and as clearly shown from the same Annexes "A" to "A-6" of the Complaint was an obligation that there was no extension period given to the plaintiffs.

8. Defendant also specifically and vehemently denies the allegations of paragraphs 9 of the Complaint and its sub-paragraphs. The truth of the matter being that under the trading rules, honoring one's obligation is a sacred commitment of stocks and market traders. Considering that in the sale of the KPP shares there is an **obligation** as certified by the word Full Cross to Seller, the KPP shares of stocks that were sold to buyers have to be bought back 30 days from the transaction date at the Buy Back Amount of 18 centavos per share and that plaintiffs and defendant have to honor the said buy back obligation. Considering, however, that plaintiffs were not delivering funds to the defendant in order to honor the said buy back obligation, not to mention the Cash account obligations of the plaintiffs to the defendant amounting to more or less 70 Million Pesos, defendant had no more recourse but to buy back the KPP shares from the buyers by selling the DMCI shares of the plaintiffs under the defendant's possession, and thus, enforcing the provisions of the Securities Dealing Accounts Agreements that was signed by the plaintiffs in favor of the defendant, a copy of which is hereto attached and made an integral part hereof as Annex "1". Section 7 of the aforesaid Securities Dealing Accounts Agreements states:

"7. Lien

> The client agrees that all monies and/or securities and/or all other property of the Client (plaintiffs) in the Company's (defendant) custody or control held from time to time shall be subject to a general lien in favour of Company for the discharge of all or any indebtedness of the Client to the Company. The Client shall not be entitled to withdraw any monies or securities held by the Company pending the payment in full to the Company of any indebtedness of the Client to

the Company. **The company shall be entitled at any time and without notice to the Client to retain, apply, sell or dispose of all or any of the [client's] property if any such obligation or liability is not discharged in full by the client when due or on demand in or towards the payment and discharge of such obligation or liability and the Company shall be under no duty to the client as to the price obtained or any losses or liabilities incurred or arising in respect of any such sale or disposal.** Subject to the relevant law and regulation on the matter, the client hereby authorizes the Company, on his/its behalf, at any time and without notice to the client's property if any such obligation or liability is not discharged." [Emphasis in the original.]

[Defendant] specifically denies the allegation of the plaintiffs that defendant sold the DMCI shares of plaintiffs for an average price of only 24 centavos for the truth of the matter being the average price those DMCI shares were sold was P0.2565 centavos per share and likewise, that price was the controlling market price of DMCI share at the time of the transaction. Defendant likewise, specifically denies the allegation that defendant surreptitiously charged and collected an interest of 30% from the plaintiff for the truth of the matter is that what defendant did not charge such interest.

Moreoever (sic), and contrary to the allegations of the Complaint, plaintiffs are fully aware and knowledgeable of the sale of their DMCI shares as early as June 2004 and that the proceeds thereof were not even enough to fully pay the buy back obligation of the plaintiffs to the buyers of KPP shares of stocks.

Plaintiffs, in order to feign ignorance of the sale of their DMCI shares had attached in the Complaint various Sales Confirmations Receipts which were marked thereto as Annexes "B" to "B-7". Wittingly or unwittingly, plaintiffs attached only the Receipts that do not bear the corresponding acknowledgement signatures of their respective officers. As averred by the defendant, plaintiffs were fully aware and knowledgeable of the sale of their DMCI shares as early June 2004, and to expose the real truth, defendant hereto attaches the identical Sales Confirmation Receipts hereto marked as **Annexes "2" to "2-G".**

In the same manner that in each and every Sales Confirmation Receipts (Annexes "2" to "2-G") the following IMPORTANT NOTICE is written:

> "All transaction are subject to the rules and customs of the Exchange and its Clearing House. It is agreed that all securities shall secure all my/our liabilities to e.securities and **is authorized in their discretion to all or any of them without notice to we/us whenever in the opinion of e.securities my/our account is not properly secured**." [Emphasis in the original.]

Likewise, after each and every transaction, defendant sent Statement of Accounts showing a detailed transaction that were entered into and that plaintiffs duly received aforesaid Statement of Accounts from the defendants as evidenced by the signatures of plaintiffs' respective officers hereto marked as Annexes "3" to "3-G".

In each and every Statements of Accounts the following Notice is clearly printed therein:

> "This statement will be considered correct unless we receive notice in writing of any exceptions within 5 days from receipt. Please address all correspondence concerning exceptions to our OPERATIONS DEPARTMENT. Kindly notify us in writing of any changes in your address."

Hence, plaintiffs, may have other ulterior motives in filing this baseless Complaint since they fully knew and consented almost a year ago of the nature of their transactions with the defendant.

9. Defendant admits paragraphs 10 to 12 inclusive of the subparagraphs only to the existence of the plaintiffs' demand letters all dated January 5, 20[0]5, but qualifies that the aforesaid letters had been answered by the defendant on January 12, 2005. The rest of the allegations are being specifically denied. In defendant's reply to the said letters, defendant clearly pointed out that plaintiffs had been duly notified of the subject transactions as early as June 9, 2004. That defendant had furnished the plaintiffs as early as July 14, 2004 Statements of Accounts of all their transactions for the period of June 1-20, 2004 which included the sale of the subject shares with a clear instruction

to notify the defendant in writing within five (5) days from receipt thereof of any exception therein. That if no correspondence was received by the defendant from the plaintiffs, the sale shall be considered as validly executed.[5]

On July 19, 2005, petitioners registered a Motion for Judgment on the Pleadings,[6] asserting that EIB materially admitted the allegations of their complaint by not tendering any genuine issue in its answer. This was opposed[7] by EIB, with both parties subsequently filing their respective reply and rejoinder. On October 7, 2005, petitioners moved that the trial court resolve their motion for judgment on the pleadings.

**The Ruling of the RTC**

On October 18, 2005, the RTC rendered its judgment on the pleadings through a Resolution, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered directing the defendant [EIB] to return the plaintiffs' [petitioners] 32,180,000 DMCI shares, as of judicial demand.
>
> On the other hand, plaintiffs are directed to reimburse the defendant the amount of ₱10,942,200.00, representing the buy back price of the 60,790,000 KPP shares of stocks at P0.18 per share.
>
> Defendant's Motion to Discharge Writ of Preliminary Attachment, based on the submitted counter bond issued by Intra Strata Assurance Corporation is hereby GRANTED.
>
> SO ORDERED.[8]

The trial court found merit in rendering a judgment on the pleadings: *first*, the assailed transactions were all documented; *second*, the transactions were admitted by the parties; and

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[5] *Id.* at 114-118.

[6] *Id.* at 157-166.

[7] *Id.* at 167-171.

[8] *Id.* at 190.

*third*, the main issues can be resolved based on the parties' documentary evidence appended to the pleadings.

The RTC, interpreting the agreement agreed upon by the parties, held that the sale of the Kuok Properties, Inc. (KKP) shares was with a buy-back obligation and not an option as petitioners argued. However, it found that, as per their notices of sale agreements, the collateral for the sale transactions is the same KKP shares. Thus, it held that EIB erred in selling the DMCI shares instead of the KKP shares which served as collateral. It ruled that Section 7 of the Securities Dealings Account Agreement (SDAA) does not apply, since it provided for a general agreement executed prior to the subsequent and specific agreements entered into by the parties specifically for the sale and repurchase of the KKP shares. Thus, the trial court concluded that EIB went beyond its authority in selling petitioners' DMCI shares in order to buy back the KKP shares.

Anent petitioners' apparent lack of objection to the account statements issued by EIB and the sales confirmation receipts covering the sale of DMCI shares, the RTC viewed it as not constituting ratification by petitioners for said documents did not disclose the purpose of the sale, applying the rule that any ambiguity in a written document should be strictly construed against the party who caused its preparation. In fine, it held that since the parties' relation is fiduciary in nature, with more reason that EIB should have been more forthright in getting the prior consent of petitioners before selling the DMCI shares.

EIB timely filed its motion for partial reconsideration of the RTC Resolution dated October 18, 2005. In the meantime, EIB moved to inhibit Judge Rommel O. Baybay from further handling the case. Both motions of EIB were opposed by petitioners.

On April 28, 2006, RTC Judge Baybay inhibited himself.[9]

Subsequently, on July 26, 2006, the RTC, Branch 66, through its new Presiding Judge, Joselito C. Villarosa, denied EIB's

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[9] *Id.* at 207.

motion for partial reconsideration.[10] After oral arguments on June 23, 2006, the RTC affirmed the propriety of the judgment on the pleadings rendered by Pairing Judge Baybay. Citing *Savellano v. Northwest Airlines*,[11] on the strict construal of any ambiguity on a written document on the party issuing it, the trial court reiterated its ruling that petitioners are not estopped from assailing the sale by EIB of their DMCI shares, for the sale confirmation receipts do not disclose the purpose of the sales made.

**The Ruling of the CA**

On April 11, 2008, the appellate court rendered the assailed decision, revoking the RTC's judgment on the pleadings and remanding the case back to the RTC for further proceedings. The *fallo* reads:

WHEREFORE, premises considered, the instant appeal is **GRANTED**. Accordingly, the Court *a quo*'s Resolution dated 18 October 2005 is REVOKED and SET ASIDE and this case is ordered remanded to the Court *a quo* which is directed to conduct further proceedings hereof **with dispatch**.

SO ORDERED.[12]

While EIB raised six issues on appeal, the CA resolved—what it considered the pivotal issue—the propriety of the rendition by the trial court of a judgment on the pleadings. The CA found that while some material allegations in petitioners' complaint were admitted by EIB, the latter's answer nonetheless raised other genuine issues which it viewed can only be threshed out in a full-blown trial, like "the average price of the KPP shares of stock, the scope of the collaterals stated in the Notices of Sale and the monetary claims of the Appellant [EIB] against the Appellees [petitioners]."[13]

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[10] *Id.* at 208-209.

[11] G.R. No. 151783, July 8, 2003, 405 SCRA 416.

[12] *Rollo*, pp. 58-59.

[13] *Id.* at 58.

Petitioners filed their motion for reconsideration, while EIB filed a Manifestation with Motion for Clarification/Deletion which was opposed by petitioners. In its motion for clarification/deletion, EIB took exception to the appellate court's pronouncement that it (EIB) admitted the sale of petitioners' DMCI shares for the purpose of buying back the KKP shares, which strengthened petitioners' claim of the nullity of the sale. Both motions were denied by the assailed resolution issued on August 5, 2008.

Thus, we have this petition.

**The Issues**

I

CONTRARY TO THE RULING OF THE COURT OF APPEALS, THE TRIAL COURT WAS CORRECT IN RENDERING JUDGMENT ON THE PLEADINGS IN THE CASE BEFORE IT.

II

THE TRIAL COURT WAS CORRECT IN RULING THAT PETITIONERS' DMCI SHARES COULD NOT BE SOLD BY RESPONDENT EIB UNDER THE NOTICES OF SALE.

III

THE TRIAL COURT WAS CORRECT IN HOLDING THAT RESPONDENT EIB COULD NOT INVOKE SECTION 7 OF THE SECURITIES DEALINGS ACCOUNT AGREEMENT AS BASIS FOR THE SALE OF PETITIONERS' DMCI SHARES.

IV

THE TRIAL COURT WAS CORRECT IN HOLDING THAT PETITIONERS WERE NOT BARRED BY RATIFICATION, LACHES OR ESTOPPEL FROM QUESTIONING THE UNAUTHORIZED SALE OF THEIR DMCI SHARES.

V

THE TRIAL COURT HAD JURISDICTION OVER THE CASE FILED BEFORE IT BY PETITIONERS WHO HAD FULLY PAID THE DOCKET FEES ASSESSED BY THE CLERK OF COURT.

VI

UNDER PREVAILING JURISPRUDENCE, THE PAIRING JUDGE DID NOT COMMIT GRAVE ABUSE OF DISCRETION. IN ANY EVENT, THE APPOINTMENT OF A PRESIDING JUDGE WHO EVENTUALLY DENIED RESPONDENT'S MOTION FOR RECONSIDERATION RENDERED THE MATTER MOOT AND ACADEMIC.[14]

**The Court's Ruling**

We grant the petition.

**Threshold Issue: Proper Payment of Docket Fees**

EIB asserts that the trial court has no jurisdiction over the complaint on account of insufficient docket fees. Although petitioners paid a total of PhP 120,758.80[15] in legal fees with the RTC, EIB argues that what was paid is based merely on petitioners' prayer for moral damages of PhP 3 million, exemplary damages of PhP 3 million, and attorney's fees of PhP 2 million, but not including petitioners' claim for PhP 4.5 million as actual damages as averred in paragraph 9 of the complaint. Thus, EIB, relying on *Manchester Development Corporation v. Court of Appeals*[16] (*Manchester*) and *Sun Insurance Office, Ltd. v. Asuncion*,[17] maintains that the RTC should not have entertained the case.

It is hornbook law that courts acquire jurisdiction over a case only upon payment of the prescribed docket fee. A plain

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[14] *Id.* at 16-18.

[15] Broken down as follows:

| | | |
|---|---|---|
| Special Allowances for Judiciary | - | PhP 55,162.00 |
| Judiciary Development Fund | - | 63,274.00 |
| Legal Research Fund | - | 1,173.80 |
| Summons Fee | - | 144.00 |
| Victim's Compensation | - | 5.00 |
| Sheriff's Trust Fund | - | 1,000.00 |
| Total Payment | - | PhP 120,758.80 |

[16] G.R. No. 75919, May 7, 1987, 149 SCRA 562.

[17] G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274.

reading of the prayer does not show that petitioners asked for the payment of actual damages of PhP 4.5 million. The reliefs asked by petitioners in the prayer are:

1. Upon the filing of the Complaint, a writ of preliminary attachment be issued *ex parte* against defendant pursuant to Section 2, Rule 57 of the 1997 *Rules of Civil Procedure*;

2. After trial, judgment rendered in favor of plaintiffs and against defendant as follows:

> On the FIRST CAUSE OF ACTION – declaring void the sale by defendant of the 32,180,000 DMCI shares of stock of plaintiffs and directing defendant to return to plaintiffs the latter's 32,180,000 DMCI shares of stock, or in the event the return thereof is not possible, holding defendant liable under Articles 1888,1889,1909 and other pertinent provisions of the Civil Code.
>
> On the SECOND CAUSE OF ACTION – directing defendant to pay plaintiffs moral damages in the amount of at least ₱3,000,000.00;
>
> On the THIRD CAUSE OF ACTION – directing defendant to pay plaintiffs exemplary damages in the amount of at least ₱3,000,000.00; and
>
> On the FOURTH CAUSE OF ACTION – directing defendant to pay plaintiffs attorney's fees in the amount of ₱2,000,000.00 and such amounts as may be proven at the trial as litigation expenses.
>
> Other just and equitable relief are likewise prayed for.[18]

Since the prayer did not ask for the payment of actual damages of PhP 4.5 million, the clerk of court correctly assessed the amount of PhP 120,758.80 as docket fees based on the total amount of PhP 8 million consisting of PhP 3 million as moral damages, PhP 3 million as exemplary damages, and PhP 2 million as attorney's fees.

In disputing the fees paid by petitioners, respondent relies on our ruling in *Manchester*, where we said that "all complaints,

[18] *Rollo*, pp. 72-73.

petitions, answers and other similar pleadings should specify the amount of damages being prayed for not only in the body of the pleading but also in the prayer, and said damages shall be considered in the assessment of the filing fees in any case."[19]

EIB insinuates that petitioners, by alleging the substantial loss of PhP 4.5 million from the sale of the DMCI shares but not specifying the amount in their prayer, circumvented the *Manchester* ruling to evade the payment of the correct filing fees. This postulation is incorrect. It is clear that petitioners demanded the return of the DMCI shares in the prayer of the complaint and NOT the alleged loss in the value of the shares. If the DMCI shares are returned, then no actual damages are suffered by petitioners. A recall of the averment in par. 9 of the complaint shows that the alleged loss of PhP 4.5 million to petitioners resulted from the sale of DMCI shares at PhP 0.24 per share when they acquired it at PhP 0.38 per share. More importantly, the court was proscribed by the *Manchester* ruling from granting actual damages of PhP 4.5 million to petitioners, because precisely the alleged damages were never sought in the prayer. *Ergo*, EIB's attack on the trial court's assumption of jurisdiction must fail.

**Procedural Issue: Judgment on the Pleadings**

At the outset, we lay stress on the Court's policy that cases should be promptly and expeditiously resolved. The Rules of Court seeks to abbreviate court procedure in order to allow the swift disposition of cases. Specifically, special strategies like demurrer to evidence, judgment on the pleadings, and summary judgment were adopted to attain this avowed goal. Full-blown trial is dispensed with and judgment is rendered on the basis of the pleadings, supporting affidavits, depositions, and admissions of the parties.

In the instant petition, the Court is confronted with the propriety of the judgment on the pleadings rendered by the Makati City RTC. Petitioners claim such adjudication on said papers and attachments is proper.

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[19] *Supra* note 16, at 569.

The petitioner's position is impressed with merit.

Rule 34 of the Rules of Court provides that "where an answer fails to tender an issue or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading." Judgment on the pleadings is, therefore, based exclusively upon the allegations appearing in the pleadings of the parties and the annexes, if any, without consideration of any evidence *aliunde*.[20]

When what is left are not genuinely issues requiring trial but questions concerning **the proper interpretation of the provisions of some written contract attached to the pleadings**, judgment on the pleadings is proper.[21]

From the pleadings, the parties admitted the following facts:

(1) EIB is the stockbroker of petitioners.

(2) Petitioners and EIB entered into a SDAA, Annex "1" of EIB's answer, which governed the relationship between petitioners as clients and EIB as stockbroker. Sec. 7 of the SDAA provides:

7. Lien

**The client agrees that all monies and/or securities and/or all other property of the Client (plaintiffs) in the Company's (defendant) custody or control held from time to time shall be subject to a general lien in favour of Company for the discharge of all or any indebtedness of the Client to the Company. The Client shall not be entitled to withdraw any monies or securities held by the Company pending the payment in full to the Company of any indebtedness of the Client to the Company**. The company shall be entitled at any time and without notice to the Client to retain, apply, sell or dispose of all or any of the [client's] property if any such obligation or liability is not discharged in full by the client when due or on demand in or towards the payment and discharge of such obligation or liability and the Company shall be under no duty to the client as to the price

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[20] 1 F.D. *Regalado, Remedial Law Compendium 393* (9th revised ed., 2005).

[21] *Philippine National Bank v. Utility Assurance & Surety Co., Inc.*, G.R. No. L-32915, September 1, 1989, 177 SCRA 208, 215-216.

obtained or any losses or liabilities incurred or arising in respect of any such sale or disposal. Subject to the relevant law and regulation on the matter, the client hereby authorizes the Company, on his/its behalf, at any time and without notice to the client's property if any such obligation or liability is not discharged.[22] (Emphasis supplied.)

It is clear from the SDAA that all monies, securities, and other properties of petitioners in EIB's custody or control shall be subject to a general lien in favor of the **latter solely for the discharge of all or any indebtedness to EIB.**

(3) From June 2003 to March 2004, petitioners, through their broker, EIB, bought 60,790,000 KKP shares of stock at the Philippine Stock Exchange (PSE).

(4) On various dates in July and August 2003, petitioners bought 16,180,000 DMCI shares of stock through EIB likewise at the PSE, while 16,000,000 DMCI shares of petitioners were transferred to EIB by Westlink Global Equities, Inc. Thus, a total of 32,180,000 DMCI shares of stock owned by petitioners were placed in the custody or control of EIB.

(5) On April 1, 2004, petitioners ordered the sale of 60,790,000 KPP shares to any buyer at the price of PhP 0.14 per share. The KPP shares were eventually sold at PhP 0.14 per share to interested buyers.

(6) Petitioners failed to reacquire or buy back the KPP shares at PhP 0.18 per share after 30 days from date of transaction.

(7) As petitioners failed to deliver funds to EIB to honor the buy-back obligation, not to mention the cash account obligations of petitioners in the amount of PhP 70 million to EIB, EIB had no recourse but to sell the DMCI shares of petitioners to reacquire the KPP shares.

(8) Thus, on various dates in June 2004, EIB, without petitioners' knowledge and consent, sold petitioners' 32,180,000 DMCI shares at the controlling market price. EIB later sent

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[22] *Rollo*, p. 116.

sales confirmation receipts to petitioners regarding the sale of their DMCI shares, said receipts containing the common notice, which reads:

> All transaction[s] are subject to the rules and customs of the Exchange and its Clearing House. **It is agreed that all securities shall secure all my/our liabilities to e.securities** and is authorized in their discretion to sell all or any of them without notice to we/us whenever in the opinion of e.securities my/our account is not properly secured.[23] (Emphasis supplied.)

(9) EIB sent statements of accounts to petitioners showing the sale of the DMCI shares which uniformly contained the following notice:

> This statement will be considered correct unless we receive notice in writing of any exceptions within 5 days from receipt. Please address all correspondence concerning exceptions to our OPERATIONS DEPARTMENT. Kindly notify us in writing of any changes in your address.[24]

(10) On January 12, 2005, petitioners wrote EIB demanding the return of the 32,180,000 DMCI shares.

(11) On January 12, 2005, EIB rejected petitioners demand for the return of the DMCI shares, as those were already sold to cover the buy back of the KPP shares.

(12) Petitioners' prayer is the return of the 32,180,000 DMCI shares by EIB to them.

The principal issue in petitioners' complaint is whether EIB can be compelled to return DMCI shares to petitioners based on the alleged unauthorized disposal or sale of said shares to comply with the buy back of the KKP shares. The threshold issue raised in the answer is the lack of jurisdiction over the complaint due to the alleged nonpayment of the proper docket fees. Affirmative defenses presented are that EIB disposed of the DMCI shares pursuant to Sec. 7 of the SDAA, and the notices of sale, ratification and laches.

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[23] *Id.* at 117.

[24] *Id.* at 118.

Based on the admissions in the pleadings and documents attached, the Court finds that the issues presented by the complaint and the answer can be resolved within the four corners of said pleadings without need to conduct further hearings. As explained by the Court in *Philippine National Bank v. Utility Assurance & Surety Co., Inc.*,[25] **when what remains to be done is the proper interpretation of the contracts or documents attached to the pleadings, then judgment on the pleadings is proper**. In the case at bar, the issue of whether the sale of DMCI shares to effectuate the buy back of the KKP shares is valid can be decided by the trial court based on the SDAA, Notices of Sale, Sales Confirmation Receipts, the letters of the parties, and other appendages to the pleadings in conjunction with the allegations or admissions contained in the pleadings without need of trial. The Makati City RTC is, therefore, correct in issuing the October 18, 2005 Resolution granting the Motion for Judgment on the Pleadings.

The CA nullified the October 18, 2005 Resolution on the ground that there are other issues that must be resolved during a full-blown trial, ratiocinating this way:

> While it may be true that the Appellant has already admitted that the sale of the DMCI shares was for the purpose of buying back the KPP shares and that such admission strengthened Appellees' claim that the sale of the DMCI shares is a nullity, there were other issues raised by the Appellant that can only be threshed out during a full blown trial, *viz*: the average price of the KPP shares of stock, the scope of the collaterals stated in the Notices of Sale and the monetary claims of the Appellant against the Appellees.[26]

To the mind of the Court, these matters are not genuinely triable issues but actually minor issues or mere incidental questions that can be resolved by construing the statements embodied in the appendages to the pleadings. The facts that gave rise to the side issues are undisputed and were already presented to the trial court rendering trial unnecessary.

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[25] *Supra* note 21.

[26] *Rollo*, p. 58.

On the disparity in the average price of KPP shares of stock, petitioners claim that the average purchase price of the KPP share is PhP 0.22 per share (par. 2 of the complaint), while EIB claims it is only PhP 0.18 per share (par. 2 of the answer). The dissimilarity in the acquisition price paid by petitioners for the KPP shares is a non-issue, since the relief prayed for is the return of the DMCI shares and not the KPP shares. Petitioners did not even claim actual damages in the prayer of the complaint.

On the scope of the collaterals stated in the Notices of Sale, it is clear from the notices that the collateral is "KPP Shares/ Property":

April 01, 2004

PACIFIC REHOUSE CORP.
Makati City
Philippine[s]

RE: SALE OF KUOK PROPERTIES INC., (KPP)

As agreed upon the above mentioned stock will be sold to a party with the following conditions attached:

| | | |
|---|---|---|
| NUMBER OF SHARES | : | 5,800,000/SHARES |
| AMOUNT @ SHARE | : | PHP 0.14 |
| CHARGES | : | Sellers Account |
| BUY BACK DATE: | | after 30 days (used on transaction date) |
| BUY BACK AMOUNT | : | PHP 0.18 |
| DATE OF EXECUTION | : | APRIL 01, 200[4] |
| KIND OF TRANSACTION | : | FULL CROSS TO SELLER |
| COLLATERAL | : | KPP SHARES/PROPERTY |

For and behalf of EIB Securities.

[Signed]
PAULINE TAN[27]

April 01, 2004

FORUM HOLDINGS CORP.
Makati City

[27] *Id.* at 88. Annex "A-1" of the Complaint.

Philippine[s]

RE: SALE OF KUOK PROPERTIES INC., (KPP)

As agreed upon the above mentioned stock will be sold to a party with the following conditions attached:

| | | |
|---|---|---|
| NUMBER OF SHARES | : | 15,560,000/SHARES |
| AMOUNT @ SHARE | : | PHP 0.14 |
| CHARGES | : | Sellers Account |
| BUY BACK DATE: | | after 30 days (used on transaction date) |
| BUY BACK AMOUNT | : | PHP 0.18 |
| DATE OF EXECUTION | : | APRIL 01, 200[4] |
| KIND OF TRANSACTION | : | FULL CROSS TO SELLER |
| COLLATERAL | : | KPP SHARES/PROPERTY |

For and behalf of EIB Securities.

[Signed]
PAULINE TAN[28]

April 01, 2004

MIZPAH HOLDINGS INC.
Makati City
Philippine[s]

RE: SALE OF KUOK PROPERTIES INC., (KPP)

As agreed upon the above mentioned stock will be sold to a party with the following conditions attached:

| | | |
|---|---|---|
| NUMBER OF SHARES | : | 8,430,000/SHARES |
| AMOUNT @ SHARE | : | PHP 0.14 |
| CHARGES | : | Sellers Account |
| BUY BACK DATE | | after 30 days (used on transaction date) |
| BUY BACK AMOUNT | : | PHP 0.18 |
| DATE OF EXECUTION | : | APRIL 01, 200[4] |
| KIND OF TRANSACTION | : | FULL CROSS TO SELLER |
| COLLATERAL | : | KPP SHARES/PROPERTY |

For and behalf of EIB Securities.

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[28] *Id.* at 89. Annex "A-2" of the Complaint.

[Signed]
PAULINE TAN[29]

April 01, 2004

REXLON REALTY GROUP INC.
Makati City
Philippine[s]

RE: SALE OF KUOK PROPERTIES INC., (KPP)

As agreed upon the above mentioned stock will be sold to a party with the following conditions attached:

| | | |
|---|---|---|
| NUMBER OF SHARES | : | 5,000,000/SHARES |
| AMOUNT @ SHARE | : | PHP 0.14 |
| CHARGES | : | Sellers Account |
| BUY BACK DATE | | after 30 days (used on transaction date) |
| BUY BACK AMOUNT | : | PHP 0.18 |
| DATE OF EXECUTION | : | APRIL 01, 200[4] |
| KIND OF TRANSACTION | : | FULL CROSS TO SELLER |
| COLLATERAL | : | KPP SHARES/PROPERTY |

For and behalf of EIB Securities.

[Signed]
PAULINE TAN[30]

April 01, 2004

RECOVERY DEVELOPMENT CORP.
Makati City
Philippine[s]

RE: SALE OF KUOK PROPERTIES INC., (KPP)

As agreed upon the above mentioned stock will be sold to a party with the following conditions attached:

| | | |
|---|---|---|
| NUMBER OF SHARES | : | 12,350,000/SHARES |
| AMOUNT @ SHARE | : | PHP 0.14 |
| CHARGES | : | Sellers Account |

[29] *Id.* at 90. Annex "A-3" of the Complaint.

[30] *Id.* at 91. Annex "A-4" of the Complaint.

| | | |
|---|---|---|
| BUY BACK DATE | | after 30 days (used on transaction date) |
| BUY BACK AMOUNT | : | PHP 0.18 |
| DATE OF EXECUTION | : | APRIL 01, 200[4] |
| KIND OF TRANSACTION | : | FULL CROSS TO SELLER |
| COLLATERAL | : | KPP SHARES/PROPERTY |

For and behalf of EIB Securities.

[Signed]
PAULINE TAN[31]

April 01, 2004

PACIFIC WIDE REALTY DEVELOPMENT CORP.
Makati City
Philippine[s]

RE: SALE OF KUOK PROPERTIES INC., (KPP)

As agreed upon the above mentioned stock will be sold to a party with the following conditions attached:

| | | |
|---|---|---|
| NUMBER OF SHARES | : | 9,000,000/SHARES |
| AMOUNT @ SHARE | : | PHP 0.14 |
| CHARGES | : | Sellers Account |
| BUY BACK DATE | | after 30 days (used on transaction date) |
| BUY BACK AMOUNT | : | PHP 0.18 |
| DATE OF EXECUTION | : | APRIL 01, 200[4] |
| KIND OF TRANSACTION | : | FULL CROSS TO SELLER |
| COLLATERAL | : | KPP SHARES/PROPERTY |

For and behalf of EIB Securities

[Signed]
PAULINE TAN[32]

The determination of the collateral in said notices can easily be made from the notices itself and Sec. 7 of the SDAA. The KPP shares stated in the notices refer to the KPP shares owned by the "Petitioners" and sold to third parties by EIB. The word

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[31] *Id.* at 92. Annex "A-5" of the Complaint.

[32] *Id.* at 93. Annex "A-6" of the Complaint.

"Property" in the notices is elucidated in the aforementioned Sec. 7 as "all monies and/or securities and/or all other property of the Client in the company's custody or control held from time to time (Client's Property) x x x." These properties shall be subject to "a general lien in favour of the Company for the discharge of all or any indebtedness and other obligations of the client to [EIB]."[33] Thus, the DMCI shares owned by petitioners are covered by the word "Property" in the Notices of Sale.

On the monetary claims by petitioners against EIB, said claims are not a bar to a judgment on the pleadings. While it was averred by petitioners under par. 9 of the complaint that they suffered a loss of PhP 4.5 million from the sale of the DMCI shares, the claim for actual damages was not set up as a relief in the prayer and, therefore, the *Manchester* doctrine precludes such award to petitioners. Anent the claim for moral damages of PhP 3 million, exemplary damages of PhP 3 million, and attorney's fees of PhP 2 million, the claim is not proper in a judgment on the pleadings in the absence of proof.[34] Sans such proof extent on record, the claim for damages is a non-issue.

In sum, there are no genuine issues that cannot be determined based on the pleadings. *Ergo*, the assailed October 18, 2005 Resolution of the Makati City RTC granting judgment on the pleadings is in accord with Rule 34 of the Rules of Court and settled jurisprudence.

**Authority of EIB to Sell DMCI Shares of Petitioners**

Petitioners assert the inapplicability of Sec. 7 of the SDAA to their liability to reacquire the KKP shares, as the DMCI shares were not sold to pay for their PhP 70 million obligation to EIB but to settle their obligation to the buyers of their KKP shares.

Petitioners' position is impressed with merit. We rule that EIB has no legal authority to sell the DMCI shares for the purpose or reacquiring the KKP shares.

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[33] *Id.* at 130.

[34] *Lichauco v. Guash*, 76 Phil. 5 (1946).

Sec. 7 of the SDAA pertains to outstanding obligations or indebtedness of petitioners to EIB but does not cover any obligation of petitioners to third-party purchasers to reacquire its KKP shares under the "full cross to seller" buy-back obligation subject of the various notices of sale.

Let us scrutinize anew Sec. 7 of the SDAA:

7. Lien

**The client agrees that all monies and/or securities and/or all other property of the Client (plaintiffs) in the Company's (defendant) custody or control held from time to time shall be subject to a general lien in favour of Company for the discharge of all or any indebtedness of the Client to the Company**. The Client shall not be entitled to withdraw any monies or securities held by the Company pending the payment in full to the Company of any indebtedness of the Client to the Company. The company shall be entitled at any time and without notice to the Client to retain, apply, sell or dispose of all or any of the [client's] property if any such obligation or liability is not discharged in full by the client when due or on demand in or towards the payment and discharge of such obligation or liability and the Company shall be under no duty to the client as to the price obtained or any losses or liabilities incurred or arising in respect of any such sale or disposal**.** Subject to the relevant law and regulation on the matter, the client hereby authorizes the Company, on his/its behalf, at any time and without notice to the client's property if any such obligation or liability is not discharged. (Emphasis supplied.)

As couched, the lien in favor of EIB attaches to any money, securities, or properties of petitioners which are in EIB's possession for the discharge of all or any indebtedness and obligations of petitioners to EIB. For this, petitioners are also barred from withdrawing its assets that are in the possession of EIB pending full payment by petitioners of their indebtedness to EIB. The above proviso also gives EIB the authority to sell or dispose of petitioners' securities or properties in its possession to pay for petitioners' indebtedness to EIB. It is, thus, evident from the above SDAA provision that said **lien and authority granted to EIB to dispose of petitioners' securities or properties in the former's possession apply only to discharge**

**and pay off petitioners' indebtedness to EIB** and nothing more.

Sec. 7 of the SDAA does not apply to petitioners' obligations to third-party purchasers of their KKP shares under the "full cross to seller" obligation, and certainly EIB could not use said provision for the repurchase of the KKP shares. Indubitably, the sale of the DMCI shares made by EIB is null and void for lack of authority to do so, for petitioners never gave their consent or permission to the sale.

Moreover, Article 1881 of the Civil Code provides that "the agent must act within the scope of his authority." Pursuant to the authority given by the principal, the agent is granted the right "to affect the legal relations of his principal by the performance of acts effectuated in accordance with the principal's manifestation of consent."[35] In the case at bar, the scope of authority of EIB as agent of petitioners is "to retain, apply, sell or dispose of all or any of the client's [petitioners'] property," if all or any indebtedness or other obligations of petitioners to EIB are not discharged in full by petitioners "when due or on demand in or towards the payment and discharge of such obligation or liability." The right to sell or dispose of the properties of petitioners by EIB is unequivocally confined to payment of the obligations and liabilities of petitioners to EIB and none other. Thus, when EIB sold the DMCI shares to buy back the KKP shares, it paid the proceeds to the vendees of said shares, the act of which is clearly an obligation to a third party and, hence, is beyond the ambit of its authority as agent. Such act is surely illegal and does not bind petitioners as principals of EIB.

As a last-ditch effort, EIB seeks refuge from the notices of sales it issued to petitioners:

Let us scrutinize a typical notice of sale issued to petitioners, thus:

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[35] Paras, CIVIL CODE OF THE PHILIPPINES ANNOTATED 762 (1st ed., 1995).

RE: SALE OF KUOK PROPERTIES INC. (KPP)

As agreed upon the above mentioned stock will be sold to a party with the following conditions attached:

| | | |
|---|---|---|
| NUMBER OF SHARES | : | x x x/SHARES |
| AMOUNT @ SHARE | : | PHP 0.14 |
| CHARGES | : | Sellers Account |
| BUY BACK DATE | : | After 30 days [based on transaction Date] |
| BUY BACK AMOUNT | : | PHP 0.18 |
| DATE OF EXECUTION | : | APRIL 1, 200[4] |
| KIND OF TRANSACTION | : | FULL CROSS TO SELLER |
| COLLATERAL | : | KPP SHARES/PROPERTY |

For and behalf of EIB Securities.

[Signed]
PAULINE TAN

The above notice states that the collateral is KPP Shares/ Property.

EIB asserts that the word "Property" refers to all the "monies and/or securities and/or all other property" of petitioners in EIB's custody or control pursuant to Sec. 7 of the SDAA. This postulation is correct. The DMCI shares are included in the word "Property" under Sec. 7 of the SDAA. However, EIB's theory stops there. As earlier explained, the SDAA, more particularly its Sec. 7, cannot be made the legal basis for EIB to sell petitioners' properties in its possession or custody to pay petitioners' obligations to third parties. The SDAA is confined only to obligations of petitioners to EIB and not to third parties like the purchases of the KKP shares. Thus, the sale of the DMCI shares to buy back the KPP shares is illegal and ineffective, since it is only answerable for the liabilities of petitioners to EIB and no one else.

The notices of sale issued by EIB covering the sale of the KKP shares of petitioners clearly show that the very same KKP shares sold to third parties albeit under a buy-back arrangement and the "Property" of petitioners were made the collaterals to secure the payment of the reacquisition. Since the possession

of the KKP shares and the "Property" were placed in EIB, a third party by common agreement, then the accessory contract in the case at bar is a contract of pledge governed by Arts. 2085 to 2092 of the Civil Code, which are provisions common to pledge and mortgage, and Arts. 2093 to 2139 on pledge.

The query is whether or not the pledge on "KKP Shares/ Property" is valid. The answer is no.

Art. 2085 of the Civil Code provides:

> Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:
>
> (1) That they be constituted to secure the fulfillment of a principal obligation;
>
> (2) That the pledgor or mortgator be the absolute owner of the thing pledged or mortgaged;
>
> (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.
>
> Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

It is indispensable that the pledgor is the absolute owner of the thing pledged (second element). In the case at bar, the KKP shares were sold to third parties by EIB at PhP 0.14 and, as a result, petitioners lost their right of ownership over the KKP shares. Hence, from the time of the sale, petitioners were no longer the absolute owners of said shares, making the pledge constituted over said KKP shares null and void.[36]

Also, it is necessary under Art. 2085 that the person constituting the pledge has the free disposal of his or her property, and in the absence of that free disposal, that he or she be legally authorized for the purpose (third element). This element is absent in the case at bar. Petitioners no longer have the free disposal of the KKP shares when EIB sold said shares at the

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[36] *National Bank v. Palma Gil*, 55 Phil. 639 (1931).

stock exchange as they are no longer the owners of the shares. Thus, there was no valid pledge constituted on the KKP shares.

The notice of sale, assuming it incorporates the accessory contract of pledge, merely stated "Property" as collateral in addition to KKP shares. This is a blatant violation of Art. 2096, which provides that "a pledge shall not take effect against third persons if description of the thing pledged and the date of the pledge do not appear in a public instrument." The thing pledged must be amply and clearly described and specifically identified. Evidently, the word "Property" is vague, broad, and confusing as to the ownership. Hence, it does not satisfy the prescription under Art. 2096 of the Code. Worse, the notice of sale is not in a public instrument as required by said legal provision; therefore, the pledge on "property" is void and without legal effect.

Moreover, the notices of sale must be construed against EIB. Any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it.[37]

The DMCI shares which EIB construed to be included within the ambit of the word "property" cannot be considered the thing pledged to secure the buy back of the KKP shares in view of the vagueness of the word "Property" and the non-applicability of the SDAA to the sale of the KKP shares.

Lastly, the appellate court ruled that the affirmative defense of estoppel was raised by EIB due to the alleged failure of petitioners to object to the sale of the DMCI shares.

The principle of estoppel rests on the rule that:

> [W]here a party, by his or her deed or conduct, has induced another to act in particular manner, estoppel effectively bars the former from adopting an inconsistent position, attitude or course of conduct that causes loss or injury to the latter. The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith

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[37] *Prudential Bank v. Alviar*, G.R. No. 150197, July 28, 2005, 464 SCRA 353, 368-369; citing *Garcia v. Court of Appeals*, G.R. No. 119845, July 5, 1996, 258 SCRA 446, 457.

and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one whom they were directed and who reasonably relied thereon.[38]

The essential elements of estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the actual facts.[39]

Reliance by respondent EIB on estoppel is misplaced. The first element does not obtain from the factual setting presented by the pleadings, attachments, and admissions. There is no allegation that petitioners performed an act which can be considered as false representation that EIB can sell their DMCI shares to reacquire the KKP shares, or concealed a material fact. Sec. 7 of the SDAA is unequivocal that EIB can only sell the shares of petitioners for payment of any indebtedness to EIB. There was no act or concealment on the part of petitioners that made known or conveyed the impression to EIB that it can sell the DMCI shares of petitioners for the latter's indebtedness or obligation to a third party in contravention of EIB's authority under Sec. 7 of the SDAA. Moreover, the second element is also absent. There was no showing that petitioners authorized EIB to pay a third party from the proceeds of the sale of their DMCI shares. Lastly, on the third element, petitioners had no knowledge of the fact that the proceeds of the sale of DMCI shares were paid to buy back the KPP shares. Reliance of EIB on the sales confirmation receipts[40] issued to petitioners does not help any. The condition printed on said receipts explicitly states that the "securities shall secure [petitioners'] liabilities to

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[38] *Genato v. Viola*, G.R. No. 169706, February 5, 2010, 611 SCRA 677, 688.

[39] *Board of Directors v. Alanday*, 109 Phil. 1058 (1960).

[40] *Rollo*, pp. 136-143.

e.securities." Even the account statements[41] issued by EIB do not reflect the payment of the proceeds of the sale of DMCI shares owned by petitioners to buy back the KKP shares previously owned by petitioners. All that these accounts show is the crediting of the proceeds of the sale of DMCI shares to petitioners and nothing more. There was no disclosure of the purpose of the sale of the DMCI shares. Clearly, there is no estoppel.

**WHEREFORE,** the petition is *GRANTED*. The CA Decision dated April 11, 2008 in CA-G.R. CV No. 87713 is *REVERSED* and *SET ASIDE*. The RTC Resolution dated October 18, 2005 in Civil Case No. 05-178 is hereby *REINSTATED*.

No costs.

**SO ORDERED.**

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

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**FIRST DIVISION**

[G.R. No. 184041. October 13, 2010]

**ANICETO G. SALUDO, JR.,** *petitioner, vs.* **SECURITY BANK CORPORATION,** *respondent.*

**SYLLABUS**

**1. CIVIL LAW; CONTRACTS; LOAN; COMPREHENSIVE OR CONTINUING SURETY; ESSENCE THEREOF, EXPLAINED.** – The essence of a continuing surety has been highlighted in the case of *Totanes v. China Banking Corporation* in this wise:

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[41] *Id.* at 144-148.

Comprehensive or continuing surety agreements are, in fact, quite commonplace in present day financial and commercial practice. A bank or financing company which anticipates entering into a series of credit transactions with a particular company, normally requires the projected principal debtor to execute a continuing surety agreement along with its sureties. By executing such an agreement, the principal places itself in a position to enter into the projected series of transactions with its creditor; with such suretyship agreement, there would be no need to execute a separate surety contract or bond for each financing or credit accommodation extended to the principal debtor. In *Gateway Electronics Corporation v. Asianbank Corporation*, the Court emphasized that "[b]y its nature, a continuing suretyship covers current and future loans, provided that, with respect to future loan transactions, they are x x x 'within the description or contemplation of the contract of guaranty.'"

**2. ID.; ID.; CONTRACT OF ADHESION; DEFINED AND CONSTRUED. —** A contract of adhesion is defined as one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his signature or his 'adhesion' thereto, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing. A contract of adhesion presupposes that the party adhering to the contract is a weaker party. That cannot be said of petitioner. He is a lawyer. He is deemed knowledgeable of the legal implications of the contract that he is signing. It must be borne in mind, however, that contracts of adhesion are not invalid *per se*. Contracts of adhesion, where one party imposes a ready-made form of contract on the other, are not entirely prohibited. The one who adheres to the contract is, in reality, free to reject it entirely; if he adheres, he gives his consent.

**3. ID.; ID.; INTEREST RATE; 18% AND 22% STIPULATED RATES OF INTEREST, SUSTAINED. —** In *Development Bank of the Philippines v. Family Foods Manufacturing Co. Ltd.*, this Court upheld the validity of the imposition of 18% and 22% stipulated rates of interest in the two (2) promissory notes. Likewise in *Spouses Bacolor v. Banco Filipino Savings and Mortgage Bank*, the 24% interest rate agreed upon by parties

was held as not violative of the Usury Law, as amended by Presidential Decree No. 116.

**APPEARANCES OF COUNSEL**

*Joedel F. Labordo* for petitioner.

*Lariba Perez Mangrobang Miralles Alpad Castañeda & Dumbrique* for respondent.

**D E C I S I O N**

**PEREZ, *J.*:**

Before this Court is a petition for review on *certiorari* seeking the reversal of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 88079 dated 24 January 2008 which affirmed the Decision[2] of Branch 149 of the Regional Trial Court (RTC) of Makati City, finding petitioner Aniceto G. Saludo, Jr. and Booklight, Inc. (Booklight) jointly and severally liable to Security Bank Corporation (SBC).

The basic facts follow—

On 30 May 1996, Booklight was extended an omnibus line credit facility[3] by SBC in the amount of ₱10,000,000.00. Said loan was covered by a Credit Agreement[4] and a Continuing Suretyship[5] with petitioner as surety, both documents dated 1 August 1996, to secure full payment and performance of the obligations arising from the credit accommodation.

Booklight drew several availments of the approved credit facility from 1996 to 1997 and faithfully complied with the terms

[1] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr., concurring. *Rollo*, pp. 64-73.

[2] Presided by Judge Cesar O. Untalan. Records, pp. 425-433.

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

[4] *Id.* at 10-13.

[5] *Id.* at 14-17.

of the loan. On 30 October 1997, SBC approved the renewal of credit facility of Booklight in the amount of ₱10,000,000.00 under the prevailing security lending rate.[6] From August 3 to 14, 1998, Booklight executed nine (9) promissory notes[7] in favor of SBC in the aggregate amount of ₱9,652,725.00. For failure to settle the loans upon maturity, demands[8] were made on Booklight and petitioner for the payment of the obligation but the duo failed to pay. As of 15 May 2000, the obligation of Booklight stood at ₱10,487,875.41, inclusive of interest past due and penalty.[9]

On 16 June 2000, SBC filed against Booklight and herein petitioner an action for collection of sum of money with the RTC. Booklight initially filed a motion to dismiss, which was later on denied for lack of merit. In his Answer, Booklight asserted that the amount demanded by SBC was not based on the omnibus credit line facility of 30 May 1996, but rather on the amendment of the credit facilities on 15 October 1996 increasing the loan line from ₱8,000,000.00 to ₱10,000,000.00. Booklight denied executing the promissory notes. It also claimed that it was not in default as in fact, it paid the sum of ₱1,599,126.11 on 30 September 1999 as a prelude to restructuring its loan for which it earnestly negotiated for a mutually acceptable agreement until 5 July 2000, without knowing that SBC had already filed the collection case.[10]

In his Answer to the complaint, herein petitioner alleged that under the Continuing Suretyship, it was the parties' understanding that his undertaking and liability was merely as an accommodation guarantor of Booklight. He countered that he came to know that Booklight offered to pay SBC the partial payment of the loan and proposed the restructuring of the obligation. Petitioner argued that said offer to pay constitutes

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[6] *Id.* at 124.

[7] *Id.* at 18-26.

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

[9] *Id.* at 32.

[10] *Id.* at 103.

a valid tender of payment which discharged Booklight's obligation to the extent of the offer. Petitioner also averred that the imposition of the penalty on the supposed due and unpaid principal obligation based on the penalty rate of 2% per month is clearly unconscionable.[11]

On 7 March 2005, Booklight was declared in default. Consequently, SBC presented its evidence *ex-parte*. The case against petitioner, however, proceeded and the latter was able to present evidence on his behalf.

After trial, the RTC ruled that petitioner is jointly and solidarily liable with Booklight under the Continuing Suretyship Agreement. The dispositive portion reads:

WHEREFORE, in view of the foregoing considerations, the Court hereby finds in favor of the plaintiff against the defendants by ordering the defendants Booklight, Inc. and Aniceto G. Saludo, Jr., jointly and severally liable (solidarily liable) to plaintiff [sic], the following sums of Philippine Pesos:

| PN No. | Amount | Interest Rate (per annum) | Beginning—Until fully paid |
|---|---|---|---|
| 74/787/98 | ₱1,927,000.00 | 20.189% | November 2, 1998 |
| 74/788/98 | 913,545.00 | 20.189% | November 2, 1998 |
| 74/789/98 | 1,927,090.00 | 20.189% | November 2, 1998 |
| 74/791/98 | 500,000.0 | 20.178% | November 4, 1998 |
| 74/792/98 | 800,000.00 | 20.178% | November 4, 1998 |
| 74/793/98 | 665,000.00 | 20.178% | November 3, 1998 |
| 74/808/98 | 970,000.00 | 20.178% | November 9, 1998 |
| 74/822/98 | 975,000.00 | 20.178% | November 12, 1998 |
| 74/823/98 | 975,000.00 | 20.178% | November 12, 1998 |

with attorney's fee of ₱100,000.00 plus cost of suit.[12]

The Court of Appeals affirmed *in toto* the ruling of the RTC.[13] Petitioner filed a motion for reconsideration but it was denied by the Court of Appeals on 7 August 2008.[14]

[11] *Id.* at 58-59.

[12] *Rollo*, p. 139.

[13] *Id.* at 72.

[14] *Id.* at 75.

Hence, the instant petition on the following arguments:

1. The first credit facility has a one-year term from 30 June 1996 to 30 June 1997 while the second credit facility runs from 30 October 1997 to 30 October 1998.
2. When the first credit facility expired, its accessory contract, the Continuing Surety agreement likewise expired.
3. The second credit facility is not covered by the Continuing Suretyship, thus, availments made in 1998 by Booklight are not covered by the Continuing Suretyship.
4. The approval of the second credit facility necessitates the consent of petitioner for the latter's Continuing Suretyship to be effective.
5. The nine (9) promissory notes executed and drawn by Booklight in 1998 did not specify that they were drawn against and subject to the Continuing Suretyship. Neither was it mentioned in the Continuing Suretyship that it was executed to serve as collateral to the nine (9) promissory notes.
6. The Continuing Suretyship is a contract of adhesion and petitioner's participation to it is his signing of his contract.
7. The approval of the second credit facility is considered a novation of the first sufficient to extinguish the Continuing Suretyship and discharge petitioner.
8. The 20.178% interest rate imposed by the RTC is unconscionable.[15]

The main derivative of these averments is the issue of whether or not petitioner should be held solidarily liable for the second credit facility extended to Booklight.

We rule in the affirmative.

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[15] *Id.* at 23-45.

There is no doubt that Booklight was extended two (2) credit facilities, each with a one-year term, by SBC. Booklight availed of these two (2) credit lines. While Booklight was able to comply with its obligation under the first credit line, it defaulted in the payment of the loan obligation amounting to ₱9,652,725.00 under the second credit line. There is likewise no dispute that the first credit line facility, with a term from 30 June 1996 to 30 June 1997, was covered by a Continuing Suretyship with petitioner acting as the surety. The dispute is on the coverage by the Continuing Suretyship of the loan contracted under the second credit facility.

Under the Continuing Suretyship, petitioner undertook to guarantee the following obligations:

> a) "Guaranteed Obligations" – the obligations of the Debtor arising from all credit accommodations extended by the Bank to the Debtor, **including increases, renewals, roll-overs, extensions, restructurings, amendments or novations thereof**, as well as (i) all obligations of the Debtor presently or hereafter owing to the Bank, as appears in the accounts, books and records of the Bank, whether direct or indirect, and (ii) any and all expenses which the Bank may incur in enforcing any of its rights, powers and remedies under the Credit Instruments as defined hereinbelow; [16] (Emphasis supplied.)

Whether the second credit facility is considered a renewal of the first or a brand new credit facility altogether was indirectly answered by the trial court when it invoked paragraph 10 of the Continuing Suretyship which provides:

> 10. Continuity of Suretyship. – This Suretyship shall remain in full force and effect until full and due payment and performance of the Guaranteed Obligations. This Suretyship shall not be terminated by the partial payment to the Bank of Guaranteed Obligations by any other surety or sureties of the Guaranteed Obligations, even if the particular surety or sureties are relieved of further liabilities.[17]

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[16] Records, p. 398.

[17] *Id.* at 400.

and concluded that the liability of petitioner did not expire upon the termination of the first credit facility.

It cannot be gainsaid that the second credit facility was renewed for another one-year term by SBC. The terms of renewal read:

> 30 October 1997
>
> **BOOKLIGHT, INC.**
>
> x x x x x x x x x
>
> Gentlemen:
>
> We are pleased to advise you that the Bank has approved the renewal of your credit facility subject to the terms and conditions set forth below:
>
> | | |
> |---|---|
> | Facility | : **Loan Line** |
> | Amount | : ₱10,000,000.00 |
> | Collateral | : Existing JSS of Atty. Aniceto Saludo (marital consent waived) |
> | Term | : 80 day Promissory Notes |
> | Interest Rate | : Prevailing SBC lending rate; subject to monthly setting and payment |
> | Expiry | : October 31, 1998 |
>
> x x x x x x x x x.[18]

This very renewal is explicitly covered by the guaranteed obligations of the Continuing Suretyship.

The essence of a continuing surety has been highlighted in the case of *Totanes v. China Banking Corporation*[19] in this wise:

> Comprehensive or continuing surety agreements are, in fact, quite commonplace in present day financial and commercial practice. A bank or financing company which anticipates entering into a series of credit transactions with a particular company, normally requires the projected principal debtor to execute a continuing surety

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[18] *Id.* at 472.

[19] G.R. No. 179880, 19 January 2009, 576 SCRA 323.

agreement along with its sureties. By executing such an agreement, the principal places itself in a position to enter into the projected series of transactions with its creditor; with such suretyship agreement, there would be no need to execute a separate surety contract or bond for each financing or credit accommodation extended to the principal debtor.[20]

In *Gateway Electronics Corporation v. Asianbank Corporation*,[21] the Court emphasized that "[b]y its nature, a continuing suretyship covers current and future loans, provided that, with respect to future loan transactions, they are x x x 'within the description or contemplation of the contract of guaranty.'"

Petitioner argues that the approval of the second credit facility necessitates his consent considering the onerous and solidary liability of a surety. This is contrary to the express waiver of his consent to such renewal, contained in paragraph 12 of the Continuing Suretyship, which provides in part:

> 12. Waivers by the Surety. – The Surety hereby waives: x x x (v) notice or consent to any modification, amendment, renewal, extension or grace period granted by the Bank to the Debtor with respect to the Credit Instruments.[22]

Respondent, as last resort, harps on the novation of the first credit facility to exculpate itself from liability from the second credit facility.

At the outset, it must be pointed out that the Credit Agreement is actually the principal contract and it covers "all credit facilities now or hereafter extended by [SBC] to [Booklight]";[23] and that the suretyship agreement was executed precisely to guarantee these obligations, *i.e.*, the credit facilities arising from the credit

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[20] *Id.* at 329-330.

[21] G.R. No. 172041, 18 December 2008, 574 SCRA 698, 717 citing *Diño v. Court of Appeals*, G.R. No. 89775, 26 November 1992, 216 SCRA 9, 17-18.

[22] Records, p. 400.

[23] *Rollo,* pp. 10-14.

agreement. The principal contract is the credit agreement covered by the Continuing Suretyship.

The two loan facilities availed by Booklight under the credit agreement are the Omnibus Line amounting to ₱10,000,000.00 granted to Booklight in 1996 and the other one is the Loan Line of the same amount in 1997. Petitioner however seeks to muddle the issue by insisting that these two availments were two separate principal contracts, conveniently ignoring the fact that it is the credit agreement which constitutes the principal contract signed by Booklight in order to avail of SBC's credit facilities. The two credit facilities are but loans made available to Booklight pursuant to the credit agreement.

On these facts the novation argument advanced by petitioner must fail.

There is no novation to speak of. It is the first credit facility that expired and not the Credit Agreement. There was a second loan pursuant to the same credit agreement. The terms and conditions under the Credit Agreement continue to apply and the Continuing Suretyship continues to guarantee the Credit Agreement.

The lameness of petitioner's stand is pointed up by his attempt to escape from liability by labelling the Continuing Suretyship as a contract of adhesion.

A contract of adhesion is defined as one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his signature or his 'adhesion' thereto, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing.[24]

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[24] *Norton Resources and Development Corporation v. All Asia Bank Corporation*, G.R. No. 162523, 25 November 2009, 605 SCRA 370, 380-381 citing *Radio Communications of the Philippines, Inc. v. Verchez*, G.R. No. 164349, 31 January 2006, 481 SCRA 384, 401, *further* citing *Philippine Commercial International Bank v. Court of Appeals*, 325 Phil. 588, 597 (1996).

A contract of adhesion presupposes that the party adhering to the contract is a weaker party. That cannot be said of petitioner. He is a lawyer. He is deemed knowledgeable of the legal implications of the contract that he is signing.

It must be borne in mind, however, that contracts of adhesion are not invalid *per se*. Contracts of adhesion, where one party imposes a ready-made form of contract on the other, are not entirely prohibited. The one who adheres to the contract is, in reality, free to reject it entirely; if he adheres, he gives his consent.[25]

Finally, petitioner challenges the imposition of 20.189% interest rate as unconscionable. We rule otherwise. In *Development Bank of the Philippines v. Family Foods Manufacturing Co. Ltd.*,[26] this Court upheld the validity of the imposition of 18% and 22% stipulated rates of interest in the two (2) promissory notes. Likewise in *Spouses Bacolor v. Banco Filipino Savings and Mortgage Bank*,[27] the 24% interest rate agreed upon by parties was held as not violative of the Usury Law, as amended by Presidential Decree No. 116.

**WHEREFORE,** the petition is *DENIED*. The decision dated 24 January 2008 of the Court of Appeals in CA-G.R. CV No. 88079 is *AFFIRMED in toto.*

**SO ORDERED**.

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

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[25] *Norton Resources and Development Corporation v. All Asia Bank Corporation, id.,* citing *Premiere Development Bank v. Central Surety & Insurance Company, Inc.,* G.R. No. 176246, 13 February 2009, 579 SCRA 359.

[26] G.R. No. 180458, 30 July 2009, 594 SCRA 461, 472 citing *Garcia v. Court of Appeals*, G.R. Nos. 82282-83, 24 November 1988, 167 SCRA 815, 830 and *Bautista v. Pilar Development Corporation*, 371 Phil. 533, 544 (1999).

[27] G.R. No. 148491, 8 February 2007, 515 SCRA 79, 84-85.

[*] Additional member in place of Associate Justice Presbitero J. Velasco, Jr., per raffle dated 11 October 2010.

**SECOND DIVISION**

[G.R. No. 185814. October 13, 2010]

**SHS PERFORATED MATERIALS, INC., WINFRIED HARTMANNSHENN, and HINRICH JOHANN SCHUMACHER,** *petitioners, vs.* **MANUEL F. DIAZ,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURTS BELOW; CONCLUSIVE IN A PETITION FOR REVIEW ON *CERTIORARI* WHERE ONLY ERRORS OF LAW SHOULD BE REVIEWED. —** As a rule, the factual findings of the courts below are conclusive in a petition for review on *certiorari* where only errors of law should be reviewed. The case, however, is an exception because the factual findings of the CA and the LA are contradictory to that of the NLRC. Thus, a review of the records is necessary to resolve the factual issues involved and render substantial justice to the parties.

**2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; MANAGEMENT PREROGATIVE; ALTHOUGH MANAGEMENT PREROGATIVE REFERS TO "THE RIGHT TO REGULATE ALL ASPECTS OF EMPLOYMENT," IT CANNOT BE UNDERSTOOD TO INCLUDE THE RIGHT TO TEMPORARILY WITHHOLD SALARY/WAGES WITHOUT THE CONSENT OF THE EMPLOYEE; EXCEPTIONS. —** Management prerogative refers "to the right of an employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of work." Although management prerogative refers to "the right to regulate all aspects of employment," it cannot be understood to include the right to temporarily withhold salary/wages without the consent of the employee. To sanction such an interpretation would be contrary to Article 116 of the Labor Code, which provides: **ART. 116.** *Withholding of wages and kickbacks prohibited.* – It shall be unlawful for any person, directly or indirectly, to withhold any amount from the wages of a worker or induce him to give up

any part of his wages by force, stealth, intimidation, threat or by any other means whatsoever without the worker's consent. Any withholding of an employee's wages by an employer may only be allowed in the form of wage deductions under the circumstances provided in Article 113 of the Labor Code, as set forth below: **ART. 113.** *Wage Deduction*. – No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except: (a) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance; (b) For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and (c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor. As correctly pointed out by the LA, "absent a showing that the withholding of complainant's wages falls under the exceptions provided in Article 113, the withholding thereof is thus unlawful."

**3. POLITICAL LAW; ADMINISTRATIVE PROCEEDINGS; WHILE ADMINISTRATIVE TRIBUNALS EXERCISING QUASI-JUDICIAL FUNCTIONS ARE FREE FROM THE RIGIDITY OF CERTAIN PROCEDURAL REQUIREMENTS, THEY ARE BOUND BY LAW AND PRACTICE TO OBSERVE THE FUNDAMENTAL AND ESSENTIAL REQUIREMENTS OF DUE PROCESS IN JUSTICIABLE CASES PRESENTED BEFORE THEM; APPLICATION IN CASE AT BAR. —** While administrative tribunals exercising quasi-judicial functions are free from the rigidity of certain procedural requirements, they are bound by law and practice to observe the fundamental and essential requirements of due process in justiciable cases presented before them. In this case, due process was afforded petitioners as respondent filed with the NLRC a Motion to Set Case for Reception of Additional Evidence as regards the said letters, which petitioners had the opportunity to, and did, oppose. Although it cannot be determined with certainty whether respondent worked for the entire period from November 16 to November 30, 2005, the consistent rule is that if doubt exists between the evidence presented by the employer and that by the employee, the scales of justice must be tilted in favor of the latter in line with the policy mandated by Articles 2 and 3 of the Labor Code to afford protection to labor and construe doubts in favor of labor. For petitioners' failure to satisfy their

burden of proof, respondent is presumed to have worked during the period in question and is, accordingly, entitled to his salary. Therefore, the withholding of respondent's salary by petitioners is contrary to Article 116 of the Labor Code and, thus, unlawful.

**4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; DEFINED; PRESENT IN CASE AT BAR. —** In *Duldulao v. Court of Appeals*, it was written: There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice by him except to forego his continued employment. It exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. x x x It is worthy to note that in his resignation letter, respondent cited petitioners' "**illegal and unfair labor practice**" as his cause for resignation. As correctly noted by the CA, respondent lost no time in submitting his resignation letter and eventually filing a complaint for illegal dismissal just a few days after his salary was withheld. These circumstances are inconsistent with voluntary resignation and bolster the finding of constructive dismissal. x x x The partial payment of a debt due to the employer and the withholding of taxes on income were valid deductions under Article 113 paragraph (c) of the Labor Code. The deduction from an employee's salary for a due and demandable debt to an employer was likewise sanctioned under Article 1706 of the Civil Code. As to the withholding for income tax purposes, it was prescribed by the National Internal Revenue Code. Moreover, the employee therein was indeed absent without leave. In this case, the withholding of respondent's salary does not fall under any of the circumstances provided under Article 113. Neither was it established with certainty that respondent did not work from November 16 to November 30, 2005. Hence, the Court agrees with the LA and the CA that the unlawful withholding of respondent's salary amounts to constructive dismissal. Respondent was constructively dismissed and, therefore, illegally dismissed. Although respondent was a probationary employee, he was still entitled to security of tenure. Section 3 (2) Article 13 of the Constitution guarantees the right of all workers to security of tenure. In using the expression "all workers," the Constitution puts no distinction between a

probationary and a permanent or regular employee. This means that probationary employees cannot be dismissed except for cause or for failure to qualify as regular employees. This Court has held that probationary employees who are unjustly dismissed during the probationary period are entitled to reinstatement and payment of full backwages and other benefits and privileges from the time they were dismissed up to their actual reinstatement. Respondent is, thus, entitled to reinstatement without loss of seniority rights and other privileges as well as to full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of actual reinstatement. Respondent, however, is not entitled to the additional amount for 13th month pay, as it is clearly provided in respondent's Probationary Contract of Employment that such is deemed included in his salary.

**5. ID.; ID.; ID.; ID.; DOCTRINE OF STRAINED RELATIONS, EXPLAINED; PRESENT IN CASE AT BAR. —** Respondent's reinstatement, however, is no longer feasible as antagonism has caused a severe strain in their working relationship. Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. Payment liberates the employee from what could be a highly oppressive work environment, and at the same time releases the employer from the obligation of keeping in its employ a worker it no longer trusts. Therefore, a more equitable disposition would be an award of separation pay equivalent to at least one month pay, in addition to his full backwages, allowances and other benefits.

**6. ID.; ID.; ID.; PERSONAL LIABILITY OF CORPORATE DIRECTORS AND OFFICERS; CORPORATE DIRECTORS AND OFFICERS ARE ONLY SOLIDARILY LIABLE WITH THE CORPORATION FOR TERMINATION OF EMPLOYMENT OF CORPORATE EMPLOYEES IF EFFECTED WITH MALICE OR IN BAD FAITH; NOT APPLICABLE IN CASE AT BAR. —** With respect to the personal liability of Hartmannshenn and Schumacher, this Court has held that corporate directors and officers are only solidarily liable with the corporation for termination of employment of corporate employees if effected with malice or in bad faith. Bad faith does not connote bad judgment or negligence; it imports dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach

of unknown duty through some motive or interest or ill will; it partakes of the nature of fraud. To sustain such a finding, there should be evidence on record that an officer or director acted maliciously or in bad faith in terminating the employee. Petitioners withheld respondent's salary in the sincere belief that respondent did not work for the period in question and was, therefore, not entitled to it. There was no dishonest purpose or ill will involved as they believed there was a justifiable reason to withhold his salary. Thus, although they unlawfully withheld respondent's salary, it cannot be concluded that such was made in bad faith. Accordingly, corporate officers, Hartmannshenn and Schumacher, cannot be held personally liable for the corporate obligations of SHS.

**APPEARANCES OF COUNSEL**

*Follosco Morallos & Herce* for petitioners.
*Salva Salva and Salva* for respondent.

**D E C I S I O N**

**MENDOZA, *J.*:**

Petitioners, by way of this petition for review on *certiorari* under Rule 45, seek to annul and set aside the December 23, 2008 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. SP No. 100015, which reversed and set aside the December 29, 2006 Resolution[2] of the National Labor Relations Commission *(NLRC)*. The NLRC Resolution, in turn, reversed and set aside the June 15, 2006 Decision[3] of the Labor Arbiter *(LA)*.[4]

**THE FACTS**

Petitioner SHS Perforated Materials, Inc. *(SHS)* is a start-up corporation organized and existing under the laws of the

[1] *Rollo*, pp. 9-24. Penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and Associate Justice Noel G. Tijam.

[2] *Id.* at 428-440.

[3] *Id.* at 880-885.

[4] *Id.* Penned by Labor Arbiter Enrico Angelo C. Portillo in NLRC Case No. RAB IV-12-21758-05-L.

Republic of the Philippines and registered with the Philippine Economic Zone Authority. Petitioner Winfried Hartmannshenn *(Hartmannshenn)*, a German national, is its president, in which capacity he determines the administration and direction of the day-to-day business affairs of SHS. Petitioner Hinrich Johann Schumacher *(Schumacher),* also a German national, is the treasurer and one of the board directors. As such, he is authorized to pay all bills, payrolls, and other just debts of SHS of whatever nature upon maturity. Schumacher is also the Executive Vice-President of the European Chamber of Commerce of the Philippines *(ECCP)* which is a separate entity from SHS. Both entities have an arrangement where ECCP handles the payroll requirements of SHS to simplify business operations and minimize operational expenses. Thus, the wages of SHS employees are paid out by ECCP, through its Accounting Services Department headed by Juliet Taguiang *(Taguiang)*.

Manuel F. Diaz (respondent) was hired by petitioner SHS as Manager for Business Development on probationary status from July 18, 2005 to January 18, 2006, with a monthly salary of ₱100,000.00. Respondent's duties, responsibilities, and work hours were described in the Contract of Probationary Employment,[5] as reproduced below:

| | | |
|---|---|---|
| NAME | : | Jose Manuel F. Diaz |
| TITLE/STATUS | : | Manager for Business Development |
| LOCATION | : | Lot C3-2A, Phase I, Camelray Industrial Park II, Calamba, Laguna |
| REPORTS TO | : | Direct to Mr. Winfried Hartmannshenn |
| Normal Working Hours | : | 8:00 a.m. to 5:00 p.m. subject to requirements of the job |
| OVERTIME | : | _____ |

JOB DESCRIPTION AND RESPONSIBILITIES:

[5] *Id.* at 122.

DAILY/GENERAL DUTIES:

(a) Represent the company in any event organized by PEZA;
(b) Perform sales/marketing functions;
(c) Monitor/follow-up customer's inquiry on EMPLOYER's services;
(d) Monitor on-going job orders/projects;
(e) Submit requirements as needed in application/renewal of necessary permits;
(f) Liaise closely with the other commercial and technical staff of the company;
(g) Accomplish PEZA documents/requirements for every sales made; with legal assistance where necessary at EMPLOYER's expense; and
(h) Perform other related duties and responsibilities.

OTHER RESPONSIBILITIES:

(a) abide by and perform to the best of his abilities all functions, duties and responsibilities to be assigned by the EMPLOYER in due course;

(b) comply with the orders and instructions given from time to time by the EMPLOYER, INC. through its authorized representatives;

(c) will not disclose any confidential information in respect of the affairs of the EMPLOYER to any unauthorized person;

(d) perform any other administrative or non-administrative duties, as assigned by any of the EMPLOYER's representative from time to time either through direct written order or by verbal assignment. The EMPLOYER may take into account EMPLOYEE's training and expertise when assigning additional tasks.

AGREED:

(sgd. Manuel Diaz).

In addition to the above-mentioned responsibilities, respondent was also instructed by Hartmannshenn to report to the SHS office and plant at least two (2) days every work week to observe technical processes involved in the manufacturing of perforated materials, and to learn about the products of the company, which respondent was hired to market and sell.

During respondent's employment, Hartmannshenn was often abroad and, because of business exigencies, his instructions to

respondent were either sent by electronic mail or relayed through telephone or mobile phone. When he would be in the Philippines, he and the respondent held meetings. As to respondent's work, there was no close supervision by him.

During meetings with the respondent, Hartmannshenn expressed his dissatisfaction over respondent's poor performance. Respondent allegedly failed to make any concrete business proposal or implement any specific measure to improve the productivity of the SHS office and plant or deliver sales except for a meagre ₱2,500.00 for a sample product. In numerous electronic mail messages, respondent acknowledged his poor performance and offered to resign from the company.

Respondent, however, denied sending such messages but admitted that he had reported to the SHS office and plant only eight (8) times from July 18, 2005 to November 30, 2005.

On November 16, 2005, in preparation for his trip to the Philippines, Hartmannshenn tried to call respondent on his mobile phone, but the latter failed to answer. On November 18, 2005, Hartmannshenn arrived in the Philippines from Germany, and on November 22 and 24, 2005, notified respondent of his arrival through electronic mail messages and advised him to get in touch with him. Respondent claimed that he never received the messages.

On November 29, 2005, Hartmannshenn instructed Taguiang not to release respondent's salary. Later that afternoon, respondent called and inquired about his salary. Taguiang informed him that it was being withheld and that he had to immediately communicate with Hartmannshenn. Again, respondent denied having received such directive.

The next day, on November 30, 2005, respondent served on SHS a demand letter and a resignation letter. The resignation letter reads:

This is to tender my irrevocable resignation from SHS Perforated Materials, Inc, Philippines, effective immediately upon receipt of my due and demandable salary for the period covering November 16 to 30, 2005, **which has yet been unpaid and is still currently being withheld albeit illegally**. This covers and amounts to the sum of

Php50,000.00 pesos net of all taxes. As my employment contract clearly shows I receive a monthly salary of Php100,000.00 net of all taxes.

It is precisely because of ***illegal and unfair labor practices*** such as these that I offer my resignation with neither regret nor remorse.[6]

In the evening of the same day, November 30, 2005, respondent met with Hartmannshenn in Alabang. The latter told him that he was extremely disappointed for the following reasons: his poor work performance; his unauthorized leave and malingering from November 16 to November 30, 2005; and failure to immediately meet Hartmannshenn upon his arrival from Germany.

Petitioners averred that respondent was unable to give a proper explanation for his behavior. Hartmannshenn then accepted respondent's resignation and informed him that his salary would be released upon explanation of his failure to report to work, and proof that he did, in fact, work for the period in question. He demanded that respondent surrender all company property and information in his possession. Respondent agreed to these "exit" conditions through electronic mail. Instead of complying with the said conditions, however, respondent sent another electronic mail message to Hartmannshenn and Schumacher on December 1, 2005, appealing for the release of his salary.

Respondent, on the other hand, claimed that the meeting with Hartmannshenn took place in the evening of December 1, 2005, at which meeting the latter insulted him and rudely demanded that he accept ₱25,000.00 instead of his accrued wage and stop working for SHS, which demands he refused. Later that same night, he sent Hartmannshenn and Schumacher an electronic mail message appealing for the release of his salary. Another demand letter for respondent's accrued salary for November 16 to November 30, 2005, 13th month pay, moral and exemplary damages, and attorney's fees was sent on December 2, 2005.

To settle the issue amicably, petitioners' counsel advised respondent's counsel by telephone that a check had been

[6] *Id.* at 135.

prepared in the amount of ₱50,000.00, and was ready for pick-up on December 5, 2005. On the same date, a copy of the formal reply letter relating to the prepared payment was sent to the respondent's counsel by facsimile transmission. Despite being informed of this, respondent never picked up the check.

Respondent countered that his counsel received petitioners' formal reply letter only on December 20, 2005, stating that his salary would be released subsequent to the turn-over of all materials owned by the company in his possession. Respondent claimed that the only thing in his possession was a sample panels folder which he had already returned and which was duly received by Taguiang on November 30, 2005.

On December 9, 2005, respondent filed a Complaint[7] against the petitioners for illegal dismissal; non-payment of salaries/ wages and 13th month pay with prayer for reinstatement and full backwages; exemplary damages, and attorney's fees, costs of suit, and legal interest.

**THE RULING OF THE LABOR ARBITER**

On June 15, 2006, the LA rendered his decision, the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered declaring complainant as having been illegally dismissed and further ordering his immediate reinstatement without loss of seniority rights and benefits. It is also ordered that complainant be deemed as a regular employee. Accordingly, respondents are hereby ordered to jointly and severally pay complainant the following

1. ₱704,166.67 (₱100,000.00 x 6.5 + (₱100,000.00 x 6.5/12) as backwages;
2. ₱50,000.00 as unpaid wages;
3. ₱37,083.33 as unpaid 13th month pay
4. ₱200,000.00 as moral and exemplary damages;
5. ₱99,125.00 as attorney's fees.

SO ORDERED.[8]

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[7] *Id.* at 177.

[8] *Id.* at 884-885.

The LA found that respondent was *constructively dismissed* because the withholding of his salary was contrary to Article 116 of the Labor Code as it was not one of the exceptions for allowable wage deduction by the employer under Article 113 of the Labor Code. He had no other alternative but to resign because he could not be expected to continue working for an employer who withheld wages without valid cause. The LA also held that respondent's probationary employment was deemed regularized because petitioners failed to conduct a prior evaluation of his performance and to give notice two days prior to his termination as required by the Probationary Contract of Employment and Article 281 of the Labor Code. Petitioners' contention that they lost trust and confidence in respondent as a managerial employee was not given credence for lack of notice to explain the supposed loss of trust and confidence and absence of an evaluation of respondent's performance.

The LA believed that the respondent complied with the obligations in his contract as evidenced by his electronic mail messages to petitioners. He ruled that petitioners are jointly and severally liable to respondent for backwages including 13th month pay as there was no showing in the salary vouchers presented that such was integrated in the salary; for moral and exemplary damages for having in bad faith harassed respondent into resigning; and for attorney's fees.

**THE RULING OF THE NLRC**

On appeal, the NLRC *reversed* the decision of the LA in its December 29, 2006 Resolution, the dispositive portion of which reads:

> WHEREFORE, premises considered, the appeal is hereby GRANTED.
>
> The Decision dated June 15, 2006 is hereby REVERSED and SET ASIDE and a new one is hereby entered:
>
> (1) dismissing the complaint for illegal dismissal for want of merit;
>
> (2) dismissing the claims for 13th month pay, moral and exemplary damages and attorney's fees for lack of factual and legal basis; and

(3) ordering respondents to pay the complainant's unpaid salary for the period covering November 16-30, 2005 in the amount of FIFTY THOUSAND PESOS (Php 50,000.00).

SO ORDERED.[9]

The NLRC explained that the withholding of respondent's salary was a valid exercise of management prerogative. The act was deemed justified as it was reasonable to demand an explanation for failure to report to work and to account for his work accomplishments. The NLRC held that the respondent voluntarily resigned as evidenced by the language used in his resignation letter and demand letters. Given his professional and educational background, the letters showed respondent's resolve to sever the employer-employee relationship, and his understanding of the import of his words and their consequences. Consequently, respondent could not have been regularized having voluntarily resigned prior to the completion of the probationary period. The NLRC further noted that respondent's 13th month pay was already integrated in his salary in accordance with his Probationary Contract of Employment and, therefore, no additional amount should be due him.

On January 25, 2007, respondent filed a motion for reconsideration but the NLRC subsequently denied it for lack of merit in its May 23, 2007 Resolution.

**THE RULING OF THE COURT OF APPEALS**

The CA *reversed* the NLRC resolutions in its December 23, 2008 Decision, the dispositive portion of said decision reads:

WHEREFORE, premises considered, the herein petition is GRANTED and the 29 December 2006 Resolution of the NLRC in NLRC CN RAB-IV-12-21758-05-L, and the 23 May 2007 Resolution denying petitioner's Motion for Reconsideration, are REVERSED and SET ASIDE. Accordingly, a new judgment is hereby entered in that petitioner is hereby awarded separation pay equivalent to at least one month pay, and his full backwages, other privileges and benefits, or their monetary equivalent during the period of his dismissal up to his supposed actual reinstatement by the Labor Arbiter on 15 June 2006.

[9] *Id.* at 439.

SO ORDERED.[10]

Contrary to the NLRC ruling, the CA held that withholding respondent's salary was not a valid exercise of management prerogative as there is no such thing as a management prerogative to withhold wages temporarily. Petitioners' averments of respondent's failure to report to work were found to be unsubstantiated allegations not corroborated by any other evidence, insufficient to justify said withholding and lacking in probative value. The malicious withholding of respondent's salary made it impossible or unacceptable for respondent to continue working, thus, compelling him to resign. The respondent's immediate filing of a complaint for illegal dismissal could only mean that his resignation was not voluntary. As a probationary employee entitled to security of tenure, respondent was illegally dismissed. The CA ruled out actual reinstatement, however, reasoning out that antagonism had caused a severe strain in their relationship. It was of the view that separation pay equivalent to at least one month pay would be a more equitable disposition.

## THE ISSUES

Aggrieved, the petitioners come to this Court praying for the reversal and setting aside of the subject CA decision presenting the following

### ISSUES

**I**

**THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN NOT AFFIRMING THE DECISION OF THE NLRC, WHICH WAS BASED ON SUBSTANTIAL EVIDENCE.**

**II**

**THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN NOT AFFIRMING THE NLRC'S HOLDING THAT PETITIONERS' WITHHOLDING OF RESPONDENT'S SALARY FOR THE PAYROLL PERIOD NOVEMBER 16-30, 2005 IN VIEW OF RESPONDENT'S FAILURE TO RENDER ACTUAL**

[10] *Id.* at 23-24.

**WORK FOR SAID PAYROLL PERIOD WAS A VALID EXERCISE OF MANAGEMENT PREROGATIVE.**

**III**

**THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN AFFIRMING THE LABOR ARBITER'S FINDING THAT RESPONDENT HAD BEEN CONSTRUCTIVELY DISMISSED.**

**IV**

**THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN AWARDING RESPONDENT SEPARATION PAY EQUIVALENT TO AT LEAST ONE MONTH PAY IN LIEU OF REINSTATEMENT, FULL BACKWAGES, AND OTHER PRIVILEGES AND BENEFITS, OR THEIR MONETARY EQUIVALENT IN VIEW OF THE FACT THAT RESPONDENT VOLUNTARILY RESIGNED FROM PETITIONER SHS AND WAS NOT ILLEGALLY DISMISSED.**

**V**

**THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN NOT HOLDING THAT INDIVIDUAL PETITIONERS HARTMANNSHENN AND SCHUMACHER MAY NOT BE HELD SOLIDARILY AND PERSONALLY LIABLE WITH PETITIONER SHS FOR THE PAYMENT OF THE MONETARY AWARD TO RESPONDENT.**

The resolution of these issues is dependent on whether or not respondent was constructively dismissed by petitioners, which determination is, in turn, hinged on finding out (i) whether or not the temporary withholding of respondent's salary/wages by petitioners was a valid exercise of management prerogative; and (ii) whether or not respondent voluntarily resigned.

## THE COURT'S RULING

As a rule, the factual findings of the courts below are conclusive in a petition for review on *certiorari* where only errors of law should be reviewed. The case, however, is an exception because the factual findings of the CA and the LA are contradictory to that of the NLRC. Thus, a review of the

records is necessary to resolve the factual issues involved and render substantial justice to the parties.[11]

Petitioners contend that withholding respondent's salary from November 16 to November 30, 2005, was justified because respondent was absent and did not show up for work during that period. He also failed to account for his whereabouts and work accomplishments during said period. When there is an issue as to whether an employee has, in fact, worked and is entitled to his salary, it is within management prerogative to temporarily withhold an employee's salary/wages pending determination of whether or not such employee did indeed work.

We disagree with petitioners.

Management prerogative refers "to the right of an employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of work."[12] Although management prerogative refers to "the right to regulate all aspects of employment," it cannot be understood to include the right to temporarily withhold salary/wages without the consent of the employee. To sanction such an interpretation would be contrary to Article 116 of the Labor Code, which provides:

**ART. 116.** *Withholding of wages and kickbacks prohibited.* – It shall be unlawful for any person, directly or indirectly, to withhold any amount from the wages of a worker or induce him to give up any part of his wages by force, stealth, intimidation, threat or by any other means whatsoever without the worker's consent.

Any withholding of an employee's wages by an employer may only be allowed in the form of wage deductions under the circumstances provided in Article 113 of the Labor Code, as set forth below:

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[11] *Norkis Trading Co., Inc. v. Gnilo*, G.R. No. 159730, February 11, 2008, 544 SCRA 279, 289.

[12] *Baybay Water District v. Commission on Audit*, 425 Phil. 326, 343-344 (2002).

**ART. 113.** *Wage Deduction.* – No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:

(a) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;

(b) For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and

(c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor.

As correctly pointed out by the LA, "absent a showing that the withholding of complainant's wages falls under the exceptions provided in Article 113, the withholding thereof is thus unlawful."[13]

Petitioners argue that Article 116 of the Labor Code only applies if it is established that an employee is entitled to his salary/wages and, hence, does not apply in cases where there is an issue or uncertainty as to whether an employee has worked and is entitled to his salary/wages, in consonance with the principle of "a fair day's wage for a fair day's work." Petitioners contend that in this case there was precisely an issue as to whether respondent was entitled to his salary because he failed to report to work and to account for his whereabouts and work accomplishments during the period in question.

To substantiate their claim, petitioners presented hard copies of the electronic mail messages[14] sent to respondent on November 22 and 24, 2005, directing the latter to contact Hartmannshenn; the Affidavit[15] of Taguiang stating that she advised respondent on or about November 29, 2005 to immediately communicate with Mr. Hartmannshenn at the SHS office; Hartmannshenn's Counter-Affidavit[16] stating that he exerted earnest efforts to

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[13] *Rollo*, p. 883.

[14] *Id.* at 133-134.

[15] *Id.* at 174.

[16] *Id.* at 162.

contact respondent through mobile phone; Schumacher's Counter-Affidavit[17] stating that respondent had not filed any request for official leave; and respondent's admission in his Position Paper[18] that he found it absurd to report to the SHS plant when only security guards and machinists were present.

Respondent, on the other hand, presented reports[19] prepared by him and submitted to Hartmannshenn on November 18 and 25, 2005; a receipt[20] issued to him by Taguiang for a client's payment during the subject period; and eight notarized letters[21] of prospective clients vouching for meetings they had with the respondent during the subject period.

The Court finds petitioners' evidence insufficient to prove that respondent did not work from November 16 to November 30, 2005. As can be gleaned from respondent's Contract of Probationary Employment and the exchanges of electronic mail messages[22] between Hartmannshenn and respondent, the latter's duties as manager for business development entailed cultivating business ties, connections, and clients in order to make sales. Such duties called for meetings with prospective clients outside the office rather than reporting for work on a regular schedule. In other words, the nature of respondent's job did not allow close supervision and monitoring by petitioners. Neither was there any prescribed daily monitoring procedure established by petitioners to ensure that respondent was doing his job. Therefore, granting that respondent failed to answer Hartmannshenn's mobile calls and to reply to two electronic mail messages and given the fact that he admittedly failed to report to work at the SHS plant twice each week during the subject period, such cannot be taken to signify that he did not work from November 16 to November 30, 2005.

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[17] *Id.* at 169.

[18] *Id.* at 1082.

[19] *Id.* at 1108-1109.

[20] *Id.* at 1110.

[21] *Id.* at 461-469.

[22] *Id.* at 123-132.

Furthermore, the electronic mail reports sent to Hartmannshenn and the receipt presented by respondent as evidence of his having worked during the subject period were not controverted by petitioners. The eight notarized letters of prospective clients vouching for meetings they had with respondent during the subject period may also be given credence. Although respondent only presented such letters in support of his Motion for Reconsideration filed with the NLRC, they may be considered by this Court in light of Section 10, Rule VII, of the 2005 New Rules of Procedure of the NLRC, which provides in part that "the rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process." While administrative tribunals exercising quasi-judicial functions are free from the rigidity of certain procedural requirements, they are bound by law and practice to observe the fundamental and essential requirements of due process in justiciable cases presented before them.[23] In this case, due process was afforded petitioners as respondent filed with the NLRC a Motion to Set Case for Reception of Additional Evidence as regards the said letters, which petitioners had the opportunity to, and did, oppose.

Although it cannot be determined with certainty whether respondent worked for the entire period from November 16 to November 30, 2005, the consistent rule is that if doubt exists between the evidence presented by the employer and that by the employee, the scales of justice must be tilted in favor of the latter[24] in line with the policy mandated by Articles 2 and 3 of the Labor Code to afford protection to labor and construe doubts in favor of labor. For petitioners' failure to satisfy their burden of proof, respondent is presumed to have worked during

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[23] *Cesa v. Office of the Ombudsman*, G.R. No. 166658, April 30, 2008, 553 SCRA 357, 365.

[24] *Phil. Employ Services and Resources, Inc. v. Paramio*, 471 Phil. 753, 777 (2004).

the period in question and is, accordingly, entitled to his salary. Therefore, the withholding of respondent's salary by petitioners is contrary to Article 116 of the Labor Code and, thus, unlawful.

Petitioners contend that respondent could not have been constructively dismissed because he voluntarily resigned as evidenced by his resignation letter. They assert that respondent was not forced to draft the letter and his intention to resign is clear from the contents and terms used, and that given respondent's professional and educational background, he was fully aware of the import and consequences of the said letter. They maintain that respondent resigned to 'save face' and avoid disciplinary measures due to his allegedly dismal work performance and failure to report to work.

The Court, however, agrees with the LA and the CA that respondent was forced to resign and was, thus, constructively dismissed. In *Duldulao v. Court of Appeals*, it was written:

> There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice by him except to forego his continued employment. It exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. [25]

What made it impossible, unreasonable or unlikely for respondent to continue working for SHS was the unlawful withholding of his salary. For said reason, he was forced to resign. It is of no moment that he served his resignation letter on November 30, 2005, the last day of the payroll period and a non-working holiday, since his salary was already due him on November 29, 2005, being the last working day of said period. In fact, he was then informed that the wages of all the other SHS employees were already released, and only his was being withheld. What is significant is that the respondent prepared

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[25] *Duldulao v. Court of Appeals*, G.R. No. 164893, March 1, 2007, 517 SCRA 191, 199.

and served his resignation letter right after he was informed that his salary was being withheld. It would be absurd to require respondent to tolerate the unlawful withholding of his salary for a longer period before his employment can be considered as so impossible, unreasonable or unlikely as to constitute constructive dismissal. Even granting that the withholding of respondent's salary on November 30, 2005, would not constitute an unlawful act, the continued refusal to release his salary after the payroll period was clearly unlawful. The petitioners' claim that they prepared the check ready for pick-up cannot undo the unlawful withholding.

It is worthy to note that in his resignation letter, respondent cited petitioners' "**illegal and unfair labor practice**"[26] as his cause for resignation. As correctly noted by the CA, respondent lost no time in submitting his resignation letter and eventually filing a complaint for illegal dismissal just a few days after his salary was withheld. These circumstances are inconsistent with voluntary resignation and bolster the finding of constructive dismissal.

Petitioners cite the case of *Solas v. Power & Telephone Supply Phils., Inc.*[27] to support their contention that the mere withholding of an employee's salary does not by itself constitute constructive dismissal. Petitioners are mistaken in anchoring their argument on said case, where the withholding of the salary was deemed lawful. In the above-cited case, the employee's salary was withheld for a valid reason — it was applied as partial payment of a debt due to the employer, for withholding taxes on his income and for his absence without leave. The partial payment of a debt due to the employer and the withholding of taxes on income were valid deductions under Article 113 paragraph (c) of the Labor Code. The deduction from an employee's salary for a due and demandable debt to an employer was likewise sanctioned under Article 1706 of the Civil Code.

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[26] *Rollo*, p. 135.

[27] G.R. No. 162332, August 28, 2008, 563 SCRA 522, 529.

As to the withholding for income tax purposes, it was prescribed by the National Internal Revenue Code. Moreover, the employee therein was indeed absent without leave.

In this case, the withholding of respondent's salary does not fall under any of the circumstances provided under Article 113. Neither was it established with certainty that respondent did not work from November 16 to November 30, 2005. Hence, the Court agrees with the LA and the CA that the unlawful withholding of respondent's salary amounts to constructive dismissal.

Respondent was constructively dismissed and, therefore, illegally dismissed. Although respondent was a probationary employee, he was still entitled to security of tenure. Section 3 (2) Article 13 of the Constitution guarantees the right of all workers to security of tenure. In using the expression "all workers," the Constitution puts no distinction between a probationary and a permanent or regular employee. This means that probationary employees cannot be dismissed except for cause or for failure to qualify as regular employees.[28]

This Court has held that probationary employees who are unjustly dismissed during the probationary period are entitled to reinstatement and payment of full backwages and other benefits and privileges from the time they were dismissed up to their actual reinstatement.[29] Respondent is, thus, entitled to reinstatement without loss of seniority rights and other privileges as well as to full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of actual reinstatement. Respondent, however, is not entitled to the additional amount for 13th month pay, as it is clearly provided in respondent's Probationary Contract of Employment that such is deemed included in his salary. Thus:

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[28] *Civil Service Commission v. Magnaye*, G.R. No. 183337, April 23, 2010.

[29] *Lopez v. Javier*, 322 Phil. 70, 81 (1996).

EMPLOYEE will be paid a net salary of One Hundred Thousand (Php100,000.00) Pesos per month payable every 15th day and end of the month.

*The compensation package defined in this paragraph shall represent all that is due and demandable under this Contract and includes all benefits required by law such as the 13th month pay. No other benefits, bonus or allowance shall be due the employee.*[30] (emphasis supplied)

Respondent's reinstatement, however, is no longer feasible as antagonism has caused a severe strain in their working relationship. Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. Payment liberates the employee from what could be a highly oppressive work environment, and at the same time releases the employer from the obligation of keeping in its employ a worker it no longer trusts. Therefore, a more equitable disposition would be an award of separation pay equivalent to at least one month pay, in addition to his full backwages, allowances and other benefits.[31]

With respect to the personal liability of Hartmannshenn and Schumacher, this Court has held that corporate directors and officers are only solidarily liable with the corporation for termination of employment of corporate employees if effected with malice or in bad faith.[32] Bad faith does not connote bad judgment or negligence; it imports dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of unknown duty through some motive or interest or ill will; it partakes of the nature of fraud.[33] To sustain such a finding,

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[30] *Rollo,* p. 121.

[31] *Golden Ace Builders v. Talde,* G.R. No. 187200, May 5, 2010.

[32] *Wensha Spa Center, Inc. v. Yung,* G.R. No. 185122, August 16, 2010.

[33] *Malayang Samahan ng Mga Mangagawa v. Ramos,* 409 Phil. 61, 83 (2001).

there should be evidence on record that an officer or director acted maliciously or in bad faith in terminating the employee.[34]

Petitioners withheld respondent's salary in the sincere belief that respondent did not work for the period in question and was, therefore, not entitled to it. There was no dishonest purpose or ill will involved as they believed there was a justifiable reason to withhold his salary. Thus, although they unlawfully withheld respondent's salary, it cannot be concluded that such was made in bad faith. Accordingly, corporate officers, Hartmannshenn and Schumacher, cannot be held personally liable for the corporate obligations of SHS.

**WHEREFORE,** the assailed December 23, 2008 Decision of the Court of Appeals in CA-G.R. SP No. 100015 is hereby *AFFIRMED* with *MODIFICATION*. The additional amount for 13th month pay is deleted. Petitioners Winfried Hartmannshenn and Hinrich Johann Schumacher are not solidarily liable with petitioner SHS Perforated Materials, Inc.

**SO ORDERED.**

*Velasco, Jr.,*[*] *Nachura, (Acting Chairperson)* [**] *Leonardo-de Castro,*[***] and *Brion,*[****] *JJ.,* concur.

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[34] *M + W Zander Philippines, Inc. and Rolf Wiltschek v. Trinidad Enriquez,* G.R. No. 169173, June 5, 2009, 588 SCRA 590, 610-611.

[*] 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 Justice Roberto A. Abad, per Special Order No. 905 dated October 5, 2010.

[****] Designated as an additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order No. 904 dated October 5, 2010.

**SECOND DIVISION**

[G.R. No. 188154. October 13, 2010]

**LOURDES A. CERCADO,** *petitioner, vs.* **UNIPROM, INC.,** *respondent.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETIREMENT, DEFINED; RETIREMENT AGE, DISCUSSED. —** Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former. Article 287 of the Labor Code, as amended by R.A. No. 7641, pegs the age for compulsory retirement at 65 years, while the minimum age for optional retirement is set at 60 years. An employer is, however, free to impose a retirement age earlier than the foregoing mandates. This has been upheld in numerous cases as a valid exercise of management prerogative.

**2. ID.; ID.; ID.; ID.; ID.; COMPULSORY RETIREMENT AGE BELOW SIXTY YEARS, WHEN SUSTAINED. —** In *Pantranco North Express, Inc. v. NLRC,* the Court upheld the retirement of private respondent pursuant to a Collective Bargaining Agreement (CBA) allowing Pantranco to compulsorily retire employees upon completing 25 years of service to the company. Interpreting Article 287, the Court ruled that the Labor Code permits employers and employees to fix the applicable retirement age lower than 60 years of age. The Court also held that there was no illegal dismissal involved, since it was the CBA itself that incorporated the agreement between the employer and the bargaining agent with respect to the terms and conditions of employment. Hence, when the private respondent ratified the CBA, he concurrently agreed to conform to and abide by its provisions. Thus, the Court stressed, "[p]roviding in a CBA for compulsory retirement of employees after twenty-five (25) years of service is legal and enforceable so long as the parties agree to be governed by such CBA." Similarly, in *Philippine Airlines, Inc. (PAL) v. Airline Pilots Association of the*

*Philippines (APAP),* the retirement plan contained in the CBA between PAL and APAP was declared valid. The Court explained that by their acceptance of the CBA, APAP and its members are obliged to abide by the commitments and limitations they had agreed to cede to management. The foregoing pronouncements served as guiding principles in the recent *Cainta Catholic School v. Cainta Catholic School Employees Union* (CCSEU), wherein the compulsory retirement of two teachers was upheld as valid and consistent with the CBA provision allowing an employee to be retired by the school even before reaching the age of 60, provided that he/she had rendered 20 years of service.

**3. ID.; ID.; ID.; ID.; RETIREMENT PLAN; A RETIREMENT PLAN GIVING THE EMPLOYER THE OPTION TO RETIRE ITS EMPLOYEES BELOW THE AGES PROVIDED BY LAW MUST BE ASSENTED TO AND ACCEPTED BY THE LATTER; CLARIFIED. —** In *Progressive Development Corporation v. NLRC,* although the retirement plan was not embodied in a CBA, its provisions were made known to the employees' union. The validity of the retirement plan was sustained on the basis of the finding of the Director of the Bureau of Working Conditions of the Department of Labor and Employment that it was expressly made known to the employees and accepted by them. It is axiomatic that a retirement plan giving the employer the option to retire its employees below the ages provided by law must be assented to and accepted by the latter, otherwise, its adhesive imposition will amount to a deprivation of property without due process of law. In the above-discussed cases, the retirement plans in issue were the result of negotiations and eventual agreement between the employer and the employees. The plan was either embodied in a CBA, or established after consultations and negotiations with the employees' bargaining representative. The consent of the employees to be retired even before the statutory retirement age of 65 years was thus clear and unequivocal. x x x Implied knowledge, regardless of duration, cannot equate to the voluntary acceptance required by law in granting an early retirement age option to an employer. The law demands more than a passive acquiescence on the part of employees, considering that an employer's early retirement age option involves a concession of the former's constitutional right to security of tenure. x x x Acceptance by the employees

of an early retirement age option must be explicit, voluntary, free, and uncompelled. While an employer may unilaterally retire an employee earlier than the legally permissible ages under the Labor Code, this prerogative must be exercised pursuant to a mutually instituted early retirement plan. In other words, only the implementation and execution of the option may be unilateral, but not the adoption and institution of the retirement plan containing such option. For the option to be valid, the retirement plan containing it must be voluntarily assented to by the employees or at least by a majority of them through a bargaining representative.

**4. ID.; ID.; ID.; ILLEGAL DISMISSAL; PRESENT WHEN THE EMPLOYEE WAS TERMINATED ON THE BASIS OF A PROVISION IN THE RETIREMENT PLAN WHICH WAS NOT FREELY ASSENTED BY THE SAID EMPLOYEE; REMEDY AVAILABLE; CASE AT BAR. —** Consistent with the Court's ruling in *Jaculbe*, having terminated petitioner merely on the basis of a provision in the retirement plan which was not freely assented to by her, UNIPROM is guilty of illegal dismissal. Petitioner is thus entitled to reinstatement without loss of seniority rights and to full backwages computed from the time of her illegal dismissal in February 16, 2001 until the actual date of her reinstatement. If reinstatement is no longer possible because the position that petitioner held no longer exists, UNIPROM shall pay backwages as computed above, plus, in lieu of reinstatement, separation pay equivalent to one-month pay for every year of service. This is consistent with the preponderance of jurisprudence relative to the award of separation pay in case reinstatement is no longer feasible.

**APPEARANCES OF COUNSEL**

*Rosero Law Office* for petitioner.

*Maria Lina Nieva S. Casals* and *Rhys Alexei Y. Murillo* for respondent.

## D E C I S I O N

**NACHURA,*** ***J.:***

Assailed in this Petition for Review on *Certiorari*[1] are the July 31, 2007 Decision[2] and the May 26, 2009 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 87508, declaring as valid the unilateral retirement of petitioner by respondent.

### *The Facts*

Petitioner Lourdes A. Cercado (Cercado) started working for respondent UNIPROM, Inc. (UNIPROM) on December 15, 1978 as a ticket seller assigned at Fiesta Carnival, Araneta Center, Quezon City. Later on, she was promoted as cashier and then as clerk typist.

On April 1, 1980, UNIPROM instituted an *Employees' Non-Contributory Retirement Plan*[4] which provides that any participant with twenty (20) years of service, regardless of age, may be retired at his option or at the option of the company.

On January 1, 2001, UNIPROM amended the retirement plan in compliance with Republic Act (R.A.) No. 7641.[5] Under the revised retirement plan,[6] UNIPROM reserved the option to retire employees who were qualified to retire under the program.

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* In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 28, 2010.

[1] RULES OF CIVIL PROCEDURE, Rule 45.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Lucas P. Bersamin (now a member of this Court) and Estela M. Perlas-Bernabe, concurring; *rollo*, pp. 59- 69.

[3] *Id.* at 71-75.

[4] *Id.* at 101-107.

[5] An Act Amending Art. 287 of the Labor Code by Providing for Retirement Pay to Qualified Private Sector Employees in the Absence of any Retirement Plan in the Establishment.

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

Sometime in December 2000, UNIPROM implemented a company-wide early retirement program for its 41 employees, including herein petitioner, who, at that time, was 47 years old, with 22 years of continuous service to the company. She was offered an early retirement package amounting to ₱171,982.90, but she rejected the same.

UNIPROM exercised its option under the retirement plan, and decided to retire Cercado effective at the end of business hours on February 15, 2001. A check of even date in the amount of ₱100,811.70, representing her retirement benefits under the regular retirement package, was issued to her. Cercado refused to accept the check.

UNIPROM nonetheless pursued its decision and Cercado was no longer given any work assignment after February 15, 2001. This prompted Cercado to file a complaint for illegal dismissal before the Labor Arbiter (LA), alleging, among others, that UNIPROM did not have a bona fide retirement plan, and that even if there was, she did not consent thereto.

For its part, respondent UNIPROM averred that Cercado was automatically covered by the retirement plan when she agreed to the company's rules and regulations, and that her retirement from service was a valid exercise of a management prerogative.

After submission of the parties' position papers, the LA rendered a decision[7] finding petitioner to be illegally dismissed. Respondent company was ordered to reinstate her with payment of full backwages.

The National Labor Relations Commission (NLRC) affirmed the LA's decision, adding that there was no evidence that Cercado consented to the alleged retirement plan of UNIPROM or that she was notified thereof.[8]

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[7] Penned by Labor Arbiter Fedriel S. Panganiban on October 30, 2002; *id.* at 156-163.

[8] Penned by Commissioner Tito F. Genilo, with Commissioners Lourdes C. Javier and Ernesto C. Verceles, concurring, dated July 2, 2004; *id.* at 195-208.

On *certiorari*, the CA set aside the decisions of the LA and the NLRC. The decretal portion of the Decision reads:

> WHEREFORE, the petition is GRANTED. The Decision of the Labor Arbiter and the assailed Resolutions of the NLRC are NULLIFIED and SET ASIDE. Judgment is hereby rendered declaring respondent's retirement as valid and legal being in conformity with petitioners' Retirement Plan.[9]

The CA ruled that UNIPROM's retirement plan was consistent with Article 287 of the Labor Code, which provides that "any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract." The CA applied the doctrine laid down in *Progressive Development Corporation v. NLRC*[10] wherein the phrase "**may be retired**" in Article 287 of the Labor Code was interpreted to mean that an option is given to an employer to retire an employee, and such option is within the discretion of the employer to exercise.

The CA further noted that Cercado cannot feign ignorance of the retirement plan considering that she was already working with the company when it took effect in 1980.

Cercado moved for reconsideration, but the same was denied.[11] Hence, the instant recourse raising the following issues: 1) whether UNIPROM has a bona fide retirement plan; and 2) whether petitioner was validly retired pursuant thereto.

The petition is meritorious.

Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former.[12]

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[9] *Supra* note 2, at 68.

[10] 398 Phil. 433 (2000).

[11] *Supra* note 3.

[12] *Magdadaro v. Philippine National Bank*, G.R. No. 166198, July 17, 2009, 593 SCRA 195, 199; *Universal Robina Sugar Milling Corporation (URSUMCO) v. Caballeda*, G.R. No. 156644, July 28, 2008, 560 SCRA 115, 132; *Cainta Catholic*

Article 287 of the Labor Code, as amended by R.A. No. 7641,[13] pegs the age for compulsory retirement at 65 years, while the minimum age for optional retirement is set at 60 years. An employer is, however, free to impose a retirement age earlier than the foregoing mandates. This has been upheld in numerous cases[14] as a valid exercise of management prerogative.

In this case, petitioner was retired by UNIPROM at the age of 47, after having served the company for 22 years, pursuant to UNIPROM's *Employees' Non-Contributory Retirement Plan*,[15] which provides that employees who have rendered at least 20 years of service may be retired at the option of the company. At first blush, respondent's retirement plan can be expediently stamped with validity and justified under the all encompassing phrase "management prerogative," which is what the CA did. But the attendant circumstances in this case, *vis-à-vis* the factual milieu of the string of jurisprudence on this matter, impel us to take a deeper look.

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*School v. Cainta Catholic School Employees Union (CCSEU)*, G.R. No. 151021, May 4, 2006, 489 SCRA 468, 482; *Ariola v. Philex Mining Corporation*, 503 Phil. 765, 783 (2005); *Pantranco North Express, Inc. v. NLRC*, 328 Phil. 470, 482 (1996).

[13] ART. 287. *Retirement*. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

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

**In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age**, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year. (Emphasis ours.)

[14] *Pantranco North Express, Inc. v. NLRC, supra* note 12; *Cainta Catholic School v. Cainta Catholic School Employees Union (CCSEU), supra* note 12.

[15] *Supra* note 6.

In *Pantranco North Express, Inc. v. NLRC,*[16] the Court upheld the retirement of private respondent pursuant to a Collective Bargaining Agreement (CBA) allowing Pantranco to compulsorily retire employees upon completing 25 years of service to the company. Interpreting Article 287, the Court ruled that the Labor Code permits employers and employees to fix the applicable retirement age lower than 60 years of age. The Court also held that there was no illegal dismissal involved, since it was the CBA itself that incorporated the agreement between the employer and the bargaining agent with respect to the terms and conditions of employment. Hence, when the private respondent ratified the CBA, he concurrently agreed to conform to and abide by its provisions. Thus, the Court stressed, "[p]roviding in a CBA for compulsory retirement of employees after twenty-five (25) years of service is legal and enforceable so long as the parties agree to be governed by such CBA."

Similarly, in *Philippine Airlines, Inc. (PAL) v. Airline Pilots Association of the Philippines (APAP),*[17] the retirement plan contained in the CBA between PAL and APAP was declared valid. The Court explained that by their acceptance of the CBA, APAP and its members are obliged to abide by the commitments and limitations they had agreed to cede to management.

The foregoing pronouncements served as guiding principles in the recent *Cainta Catholic School v. Cainta Catholic School Employees Union (CCSEU),*[18] wherein the compulsory retirement of two teachers was upheld as valid and consistent with the CBA provision allowing an employee to be retired by the school even before reaching the age of 60, provided that he/she had rendered 20 years of service.

In *Progressive Development Corporation v. NLRC,*[19] although the retirement plan was not embodied in a CBA, its

[16] *Supra* note 12.

[17] 424 Phil. 356 (2002).

[18] *Supra* note 12.

[19] *Supra* note 10.

provisions were made known to the employees' union. The validity of the retirement plan was sustained on the basis of the finding of the Director of the Bureau of Working Conditions of the Department of Labor and Employment that it was expressly made known to the employees and accepted by them.

It is axiomatic that a retirement plan giving the employer the option to retire its employees below the ages provided by law must be assented to and accepted by the latter, otherwise, its adhesive imposition will amount to a deprivation of property without due process of law.

In the above-discussed cases, the retirement plans in issue were the result of negotiations and eventual agreement between the employer and the employees. The plan was either embodied in a CBA, or established after consultations and negotiations with the employees' bargaining representative. The consent of the employees to be retired even before the statutory retirement age of 65 years was thus clear and unequivocal.

Unfortunately, no similar situation obtains in the present case. In fact, not even an iota of voluntary acquiescence to UNIPROM's early retirement age option is attributable to petitioner.

The assailed retirement plan of UNIPROM is not embodied in a CBA or in any employment contract or agreement assented to by petitioner and her co-employees. On the contrary, UNIPROM's *Employees' Non-Contributory Retirement Plan* was unilaterally and compulsorily imposed on them. This is evident in the following provisions of the 1980 retirement plan and its amended version in 2000:

ARTICLE III
ELIGIBILITY FOR PARTICIPATION

Section 1. Any regular employee, as of the Effective Date, **shall automatically** become a Participant in the Plan, provided the Employee was hired below age 60.

Verily, petitioner was forced to participate in the plan, and the only way she could have rejected the same was to resign

or lose her job. The assailed CA Decision did not really make a finding that petitioner actually accepted and consented to the plan. The CA simply declared that petitioner was deemed aware of the retirement plan on account of the length of her employment with respondent. Implied knowledge, regardless of duration, cannot equate to the voluntary acceptance required by law in granting an early retirement age option to an employer. The law demands more than a passive acquiescence on the part of employees, considering that an employer's early retirement age option involves a concession of the former's constitutional right to security of tenure.

We reiterate the well-established meaning of retirement in this jurisdiction: *Retirement is the result of a bilateral act of the parties, **a voluntary agreement** between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former*.[20]

Acceptance by the employees of an early retirement age option must be explicit, voluntary, free, and uncompelled. While an employer may unilaterally retire an employee earlier than the legally permissible ages under the Labor Code, this prerogative must be exercised pursuant to a mutually instituted early retirement plan. In other words, only the implementation and execution of the option may be unilateral, but not the adoption and institution of the retirement plan containing such option. For the option to be valid, the retirement plan containing it must be voluntarily assented to by the employees or at least by a majority of them through a bargaining representative.

The following pronouncements in *Jaculbe v. Silliman University*[21] are elucidating:

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[20] *Magdadaro v. Philippine National Bank*, *supra* note 12; *Universal Robina Sugar Milling Corporation (URSUMCO) v. Caballeda*, *supra* note 12, at 132; *Cainta Catholic School v. Cainta Catholic School Employees Union (CCSEU)*, *supra* note 12, at 482; *Ariola v. Philex Mining Corporation*, *supra* note 12, at 169; *Pantranco North Express, Inc. v. NLRC*, *supra* note 12.

[21] G.R. No. 156934, March 16, 2007, 518 SCRA 445, 452.

> [A]n employer is free to impose a retirement age less than 65 for as long as it has the employees' consent. Stated conversely, employees are free to accept the employer's offer to lower the retirement age if they feel they can get a better deal with the retirement plan presented by the employer.

We disagree with the CA's conclusion that the retirement plan is part of petitioner's employment contract with respondent. It must be underscored that petitioner was hired in 1978 or 2 years before the institution of UNIPROM's retirement plan in 1980. Logically, her employment contract did not include the retirement plan, much less the early retirement age option contained therein.

We also cannot subscribe to respondent's submission that petitioner's consent to the retirement plan may be inferred from her signature in the personnel action forms[22] containing the phrase: *"Employee hereby expressly acknowledges receipt of and undertakes to abide by the provisions of his/her Job Description, Company Code of Conduct and such other policies, guidelines, rules and regulations the company may prescribe."*

It should be noted that the personnel action forms relate to the increase in petitioner's salary at various periodic intervals. To conclude that her acceptance of the salary increases was also, simultaneously, a concurrence to the retirement plan would be tantamount to compelling her to agree to the latter. Moreover, voluntary and equivocal acceptance by an employee of an early retirement age option in a retirement plan necessarily connotes that her consent specifically refers to the plan or that she has at least read the same when she affixed her conformity thereto.

Hence, consistent with the Court's ruling in *Jaculbe*,[23] having terminated petitioner merely on the basis of a provision in the retirement plan which was not freely assented to by her, UNIPROM is guilty of illegal dismissal. Petitioner is thus entitled to reinstatement without loss of seniority rights and to full

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[22] *Rollo*, pp. 132-134.

[23] *Supra* note 21.

backwages computed from the time of her illegal dismissal in February 16, 2001 until the actual date of her reinstatement. If reinstatement is no longer possible because the position that petitioner held no longer exists, UNIPROM shall pay backwages as computed above, plus, in lieu of reinstatement, separation pay equivalent to one-month pay for every year of service. This is consistent with the preponderance of jurisprudence[24] relative to the award of separation pay in case reinstatement is no longer feasible.

**WHEREFORE,** the petition is *GRANTED*. The July 31, 2007 Decision and the May 26, 2009 Resolution of the Court of Appeals in CA- G.R. SP No. 87508 are hereby *REVERSED* and *SET ASIDE*. The October 30, 2002 Decision of the Labor Arbiter is *REINSTATED*, with the *MODIFICATION* that the award of backwages shall be computed from the time of her illegal dismissal until the actual date of her reinstatement. If reinstatement is no longer possible because the position that petitioner held no longer exists, respondent UNIPROM shall pay backwages as computed above, plus, in lieu of reinstatement, separation pay equivalent to one-month pay for every year of service.

**SO ORDERED.**

*Velasco, Jr.,*[**] *Leonardo-de Castro,*[***] *Brion,*[****] and *Mendoza, JJ.,* concur.

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[24] *Phil. Tobacco Flue-Curing & Redrying Corp. v. NLRC*, 360 Phil. 218 (1998); *Gaco v. NLRC*, G.R. No. 104690, February 23, 1994, 230 SCRA 260; *Grolier International, Inc. v. Executive Labor Arbiter Amansec*, 257 Phil. 1050 (1989).

[**] Additional member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 897 dated Setember 28, 2010.

[***] Additional member in lieu of Associate Justice Roberto A. Abad per Special Order No. 905 dated October 5, 2010.

[****] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 904 dated October 5, 2010.

**FIRST DIVISION**

[G.R. No. 191254. October 13, 2010]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **ROEL "RUEL" SALLY,** *accused-appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FOR PERSONAL MOTIVE ON THE PART OF A WITNESS TO TESTIFY AGAINST THE ACCUSED TO BE APPRECIATED AS SHOWING BIAS, ITS PRESENCE SHOULD BE SUPPORTED BY SATISFACTORY PROOF; NOT PRESENT IN CASE AT BAR. —** The inconsistency accused-appellant sees is more apparent than real. x x x There is no real inconsistency between the sworn statement and the testimony of Roger Lara. While accused-appellant would have it appear that Lara would have been unable to witness the killing of Edwin Lucas, he latches onto the portion of the sworn statement relating the fact of Lara's running outside after the killing of Jose Bersero. That fact did not preclude Lara from witnessing the killing of Edwin Lucas, and his testimony in open court actually clarifies the matter, that he saw accused-appellant kill Edwin Lucas because Lara turned and looked back after he had put some distance between himself and accused-appellant. Accused-appellant cannot point to alleged differences between the sworn statement and the testimony of Roger Lara to exculpate him. Accused-appellant made an effort to show that witness Roger Lara was motivated to testify in favor of the prosecution as he had been asked to by the relatives of the victim, Edwin Lucas. This endeavor of accused-appellant deserves short shrift. Whether or not the victim's relatives contacted Roger Lara or asked him to testify in the present case is immaterial, as Lara was merely reiterating what he had stated in his sworn statement executed on the day of the killings. For personal motive on the part of a witness to testify against the accused to be appreciated as showing bias, its presence should be supported by satisfactory proof. Accused-appellant has failed to show that Lara was impelled by improper motive to testify, thus Lara's testimony is entitled to full faith and credit.

**2. ID.; ID.; ALIBI; ALIBI CANNOT BE SUSTAINED WHERE IT IS NOT ONLY WITHOUT CREDIBLE CORROBORATION BUT ALSO DOES NOT DEMONSTRATE THE PHYSICAL IMPOSSIBILITY OF THE PRESENCE OF THE ACCUSED AT THE PLACE OF THE CRIME. —** Alibi is the weakest defense not only because it is inherently weak and unreliable, but also because it is easy to fabricate. It is generally rejected when the accused is positively identified by a witness. Accused-appellant states that he was elsewhere at the time the killings occurred, namely at his alleged work as a hauler at the Balintawak Market in Quezon City. However, he failed to produce any corroborating witness to his alleged presence there, or even failed to show that he was indeed employed as such. The RTC thus correctly disregarded the defense of alibi. It is well-settled that alibi cannot be sustained where it is not only without credible corroboration but also does not, on its face, demonstrate the physical impossibility of the presence of the accused at the place of the crime or in its immediate vicinity at the time of its commission.

**3. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON ARE ENTITLED TO THE HIGHEST RESPECT; APPLICATION IN CASE AT BAR. —** It is hornbook doctrine that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect. Having seen and heard the witnesses and observed their behavior and manner of testifying, the trial court is deemed to have been in a better position to weigh the evidence. Accused-appellant has failed to show that the trial court misappreciated any of the facts before it; thus, there is no need to deviate from the established doctrine.

**4. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT IN CASE AT BAR. —** Article 14, paragraph 16(2) of the Revised Penal Code provides, "There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." This precisely covers the situation that accused-appellant took advantage of, when he attacked the victims while they were sleeping. The essence of treachery is the sudden and unexpected attack by the aggressor

on unsuspecting victims, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims. The RTC was correct in appreciating the circumstance of treachery accompanying the act, which qualifies the killing to murder under the first paragraph of Art. 248 of the Revised Penal Code, not homicide.

**5. ID.; MURDER; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY, MORAL, AND EXEMPLARY DAMAGES; WHEN PROPER. —** [I]n murder, the grant of civil indemnity, which has been fixed by jurisprudence at PhP 50,000, requires no proof other than the fact of death as a result of the crime and proof of the accused's responsibility for it. On the other hand, moral damages of PhP 50,000 are awarded in view of the violent death of the victim which does not necessitate any allegation or proof of the emotional sufferings of the heirs. Likewise, in line with prevailing jurisprudence, the heirs of Edwin Lucas *y* Simon are also entitled to an award of PhP 30,000 as exemplary damages, because the commission of the crime of murder was attended by an aggravating circumstance whether ordinary or qualifying, as in this case. Art. 2230 of the Civil Code provides: In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances.

**6. ID.; ID.; ID.; TEMPERATE OR MODERATE DAMAGES; AWARD THEREOF IN CASE AT BAR. —** Art. 2224 of the Civil Code provides, "Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty." This amount of PhP 25,000 was awarded by the CA to the victim's families in lieu of actual damages, as the families failed to present proof of burial as well as medical expenses.

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

**VELASCO, JR., *J.*:**

Before this Court on appeal is the Decision dated December 15, 2009[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02948, which upheld the convictions of accused-appellant Roel "Ruel" Sally in Criminal Case Nos. Q-94-56820 and Q-94-56821, decided by the Regional Trial Court (RTC), Branch 37 in Quezon City on June 7, 2007.

In Criminal Case No. Q-94-56820, accused-appellant was charged with Murder in an Information dated April 11, 1994, which reads as follows:

> That on or about the 30th day of January, 1994, in Quezon City, Philippines, the above-named accused, with intent to kill and qualified by evident premeditation and treachery, did then and there, wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one EDWIN LUCAS *Y* SIMON, by then and there hitting him with an iron pipe (*tubong bakal)*, thereby inflicting upon him serious and mortal injuries which were the direct and immediate cause of his untimely death, to the damage and prejudice of the [heirs] of the said Edwin Lucas *y* Simon.[2]

In Criminal Case No. Q-94-56821, accused-appellant was also charged with Murder in an Information dated April 11, 1994, which reads as follows:

> That on or about the 30th day of January, 1994, in Quezon City, Philippines, the above-named accused, with intent to kill, and qualified by evident premeditation and treachery, did then and there, wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one JOSE BERSERO Y SINGCO, by then and there hitting him on his head with an iron pipe (*tubong bakal*), thereby inflicting upon him serious and mortal injuries which

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[1] Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Bienvenido L. Reyes and Antonio L. Villamor.

[2] Records, p. 2.

were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said Jose Bersero *y* Singco.[3]

Upon motion of the prosecution,[4] these cases were consolidated, as they were founded on the same facts and the prosecution would be presenting common evidence in both cases.

Although a warrant of arrest for accused-appellant had been issued on April 19, 1994, considering that he had not been apprehended, the case was ordered archived on October 27, 1994.[5]

In 2003, accused-appellant was finally arrested. At his arraignment on February 23, 2004, he pleaded not guilty to both charges.[6]

The prosecution presented Roger Lara as the sole witness to the killing, along with Renato Lucas, the brother of the deceased Edwin Lucas, to testify as to the income of Edwin at the time of his death, and Dr. Valentin Bernales of the Medico Legal Division of the National Bureau of Investigation (NBI), to interpret the necropsy report pertaining to the two victims.

Roger Lara testified that on the night of January 29, 1994, he was in a drinking session that lasted until 1:30 a.m. the following morning with accused-appellant, victims Edwin Lucas *y* Simon and Jose Bersero *y* Singco, among others, inside the Nikon Iron Works office located along Commonwealth Avenue, Diliman, Quezon City. Their drinking companions left earlier, leaving behind Lara, accused-appellant, and the two victims. Lara testified that he was falling asleep inside the office when he heard a noise coming from the shop. When he investigated the matter, he saw accused-appellant hitting the sleeping Jose Bersero with a piece of pipe. Lara further stated that accused-appellant then rushed towards him and attempted to hit him, but he avoided the accused and ran.[7] He testified that he also

[3] *Id.* at 8.

[4] *Id.* at 1.

[5] *Id.* at 25.

[6] *Id.* at 42.

[7] *Id.* at 116.

saw accused-appellant attack the sleeping Edwin Lucas with a pipe. Lara then went to their employer's house to report the incident.[8] When he and the employer, Virgilio Reyes, reached the shop, they only saw the bodies of the two victims, as accused-appellant was no longer there. He then reported the matter to the police.[9]

Renato Lucas testified that his brother, Edwin Lucas, worked at the Nikon Iron Works, and had a salary of PhP 140 a day at the time of his death.[10]

Dr. Valentin Bernales of the NBI interpreted the necropsy reports on Jose Bersero and Edwin Lucas. The reports had been prepared by Dr. Juan Zaldariaga, the attending medico-legal officer for those cases but who had resigned earlier. Dr. Bernales testified that from the report on Jose Bersero, the victim died of traumatic head injuries on January 30, 1994, inside 888 Commonwealth Ave., Quezon City, and that the body was found at 7:15 a.m. He also testified that based on the report on Edwin Lucas, the victim died of traumatic head injury on January 30, 1994, and that the body was found at 7:15 a.m.[11]

In his defense, accused-appellant claimed that on January 30, 1994 at about 1:30 a.m., he had been working at the Balintawak Market in Quezon City as a manual hauler, a job he had for nine years.[12] He testified that his work lasted from 6:00 p.m. to 6:00 a.m.,[13] and that he did not work for Nikon Iron Works.[14] He further testified that he did not know Edwin Lucas or Jose Bersero, nor did he know anyone who worked

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[8] *Id.* at 92.

[9] *Id.* at 93.

[10] *Id.* at 139-140.

[11] *Id.* at 178-181.

[12] *Id.* at 210-211.

[13] *Id.* at 212.

[14] *Id.* at 219.

for Nikon Iron Works. He denied killing Lucas and Bersero, and that he had no knowledge of the matters testified to by Roger Lara.[15]

After considering the evidence for both sides, the trial court rendered its Decision on June 7, 2007, finding accused-appellant guilty in Criminal Case Nos. Q-94-56820-21, the dispositive portion of the decision reading as follows:

> WHEREFORE, judgment is hereby rendered sentencing ROEL "RUEL" SALLY, to suffer the penalty of *Reclusion Perpetua* in Crim. Case No. Q-94-56820 and to pay the heirs of Edwin Lucas *y* Simon the sum of ₱75,000.00 as indemnity;
>
> In Crim. Case No. Q-94-56821, likewise, ROEL "RUEL" SALLY, is likewise sentenced to suffer the penalty of *Reclusion Perpetua* and to pay the heirs of Jose Bersero *y* Singco the sum of ₱75,000.00, as indemnity.[16]

**The Case before the CA**

In his appeal, accused-appellant claimed that the RTC erred in finding him guilty of the crimes charged, or assuming that he was indeed guilty of the crimes charged, the RTC should have convicted him of homicide instead of murder.

He claimed that Lara's testimony was inconsistent and contradicted his *Sinumpaang Salaysay*, which had been executed at the police station. He further claimed that the prosecution had failed to prove the existence of treachery when it failed to present as evidence the iron pipe, which was used in the killings.

The CA found the testimony of Roger Lara to be credible and convincing, and thus upheld the RTC decision. The CA found the need for modifications, however, when it came to the award for damages, by reducing the award of civil indemnity to PhP 50,000, and awarding moral and exemplary damages. The dispositive portion of the CA decision, thus, reads as follows:

> WHEREFORE, the *Decision* dated 7 June 2007 of the Regional Trial Court of Quezon City, Branch 87, in Criminal Case Nos. Q-94-56820

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[15] *Id.* at 219-222.

[16] *Rollo*, p. 51.

and Q-94-56821 is hereby **AFFIRMED** with the following **MODIFICATIONS** such that in both cases:

1. The award of ₱75,000.00 as civil indemnity is **REDUCED** TO ₱50,000.00

2. Appellant Roel "Ruel" Sally is **ORDERED** to pay the heirs of Edwin Lucas and Jose Bersero the amounts of ₱50,000.00, ₱25,000.00 and ₱25,000.00 as moral, exemplary and actual damages, respectively

**SO ORDERED**.[17]

Hence, we have this appeal.

**The Ruling of this Court**

The appeal is without merit.

Addressing the errors raised by accused-appellant in his appeal before the CA, we find no reason to reverse the RTC.

Accused-appellant claims that the testimony of the sole witness Roger Lara in open court on February 3, 2005 is inconsistent with the latter's sworn statement executed on January 30, 1994.

The inconsistency accused-appellant sees is more apparent than real.

In his sworn statement on January 30, 1994, Roger Lara related the events as follows:

*T: Maaari bang isalaysay mo sa akin ang buong pangyayari?*

*S: Nang ala 1:30 ng madaling araw ika 30 ng Enero 1994 nagkakainuman po kami nila ROGER, JOSE, RUEL at iba pang kasamahan namin sa trabaho sa loob ng NIKO IRON WORKS kung saan kami ay nagtratrabaho, nang marami nang na-iinum itong si RUEL kinukulit po si Mang JOSE at EDWIN kaya sinaway siya ng dalawa na kung lasing na siya (RUEL) ay matulog na, pagkatapos po nagkaroon ng pagtatalo sa pagitan ni RUEL at ng dalawa kumuha po ng patalim itong si RUEL pero naawat ito ng iba pa naming kasamahan. Pagkatapos po nang natutulog na si*

[17] *Id.* at 13.

*Mang JOSE at si EDWIN nakarinig ako ng gulo sa labas ng aming barracks at nakita ko na pinalo ni RUEL si Mang JOSE ng tubong bakal at nang ako'y lalabas na sa barracks ako naman ang pinalo mabuti na lang at aking nailagan at ang hinarap nito ay si EDWIN habang siya'y natutulog.*

*T: Ano ang ginawa mo nang makita mo ang pangyayari?*
*S: Tumakbo po ako sa labas ng bakuran dahil baka ako ay patayin din.*

*T: Saan ba natutulog si Mang JOSE at si EDWIN?*
*S: Si Mang JOSE po ay nasa labas at si EDWIN ay sa barracks na aming pinaka-opisina.*

*T: Saan pinalo si Mang JOSE at si EDWIN?*
*S: Sa ulo at batok.*[18]

This, accused-appellant claims, is at variance with the witness' testimony on February 3, 2005, related as follows:

COURT

Q You only presume that the accused attacked Mang Jose outside because of the noise that you heard. Therefore, you did not exactly see the accused attacking Mang Jose using an iron pipe.

A It is like this, Your Honor. When I heard the noise I peeped and there I saw outside the accused hitting Mang Jose and when I came out, the accused also attacked me but I was able to avoid it. After that, he went inside the office and attacked Edwin.

x x x x x x x x x

ATTY MATEO:

Q Mr. Witness, did I get you right that you are maintaining that you saw the accused attacking Mang Jose despite the fact that you were sleeping?

A I was sleeping but I was awakened by the noise and when I opened the door to see what is the noise about, I saw the accused attacking Mang Jose.

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[18] Records, p. 18.

Q You made mention that the accused also attacked you but you were able to evade his attack and then you scampered away because of the fear for your life. Is that correct?

PROSECUTOR:

Already answered.

ATTY MATEO:

Q So because you ran away you would not know when the accused turned to Edwin and attacked Edwin.

A When I went out of the office because I was awakened by the noise, I saw the accused attacking Mang Jose and he hit me in fact only I was able to avoid it. So I ran away, but when I looked back, I saw the accused hitting Edwin with an iron pipe. (Witness demonstrating holding an iron pipe hitting Edwin).

COURT

Q Where was Edwin at the time that the accused was attacking Mang Jose, he was inside the office sleeping?

A Yes, Your Honor.

Q By the time you were already outside the office you were able to leave the area because of your fear for your life?

A Yes, Your Honor. He might kill me also.

Q And because of your feeling of fear for your life your instinct was to immediately leave the place and did not mind anything more what is happening?

A Yes, Your Honor.

ATTY. MATEO:

Q And because of that you would not be in a position to see that and it would be impossible for you to see the accused attacking Edwin?

A The truth is when I ran away, I looked back and I saw Roel going inside the office where Edwin was sleeping.[19]

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[19] *Id.* at 115-117.

There is no real inconsistency between the sworn statement and the testimony of Roger Lara. While accused-appellant would have it appear that Lara would have been unable to witness the killing of Edwin Lucas, he latches onto the portion of the sworn statement relating the fact of Lara's running outside after the killing of Jose Bersero. That fact did not preclude Lara from witnessing the killing of Edwin Lucas, and his testimony in open court actually clarifies the matter, that he saw accused-appellant kill Edwin Lucas because Lara turned and looked back after he had put some distance between himself and accused-appellant.

Accused-appellant cannot point to alleged differences between the sworn statement and the testimony of Roger Lara to exculpate him. As held in *People v. Dabon*:

> The most honest witnesses may make mistakes sometimes, but such innocent lapses do not necessarily impair their credibility. The testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein. It is a matter of judicial experience that an affidavit, being *ex parte*, is almost always incomplete and often inaccurate, sometimes from partial suggestions, sometimes for want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory and for his accurate recollection of all that belongs to the subject. Affidavits taken *ex parte* are generally considered to be inferior to the testimony given in open court. Therefore, discrepancies between statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him.[20]

Accused-appellant made an effort to show that witness Roger Lara was motivated to testify in favor of the prosecution as he had been asked to by the relatives of the victim, Edwin Lucas. This endeavor of accused-appellant deserves short shrift. Whether or not the victim's relatives contacted Roger Lara or asked him to testify in the present case is immaterial, as Lara was merely reiterating what he had stated in his sworn statement

[20] G.R. No. 102004, December 16, 1992, 216 SCRA 656, 664.

executed on the day of the killings. For personal motive on the part of a witness to testify against the accused to be appreciated as showing bias, its presence should be supported by satisfactory proof.[21] Accused-appellant has failed to show that Lara was impelled by improper motive to testify, thus Lara's testimony is entitled to full faith and credit.

In his defense, accused-appellant raises the defense of alibi. This defense must fail in the light of the credible testimony of Roger Lara. Alibi is the weakest defense not only because it is inherently weak and unreliable, but also because it is easy to fabricate. It is generally rejected when the accused is positively identified by a witness.[22] Accused-appellant states that he was elsewhere at the time the killings occurred, namely at his alleged work as a hauler at the Balintawak Market in Quezon City. However, he failed to produce any corroborating witness to his alleged presence there, or even failed to show that he was indeed employed as such. The RTC thus correctly disregarded the defense of alibi. It is well-settled that alibi cannot be sustained where it is not only without credible corroboration but also does not, on its face, demonstrate the physical impossibility of the presence of the accused at the place of the crime or in its immediate vicinity at the time of its commission.[23]

The RTC found the testimony of Roger Lara more credible than that of accused-appellant. It is hornbook doctrine that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect. Having seen and heard the witnesses and observed their behavior and manner of testifying, the trial court is deemed to have been in a better position to weigh the evidence.[24] Accused-appellant

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[21] *Vidar v. People*, G.R. No. 177361, February 1, 2010, 611 SCRA 216, 226.

[22] *Sumbillo v. People*, G.R. No. 167464, January 21, 2010, 610 SCRA 477, 484.

[23] *People v. Sobusa*, G.R. No. 181053, January 21, 2010, 610 SCRA 538, 558.

[24] *People v. Ofemiano*, G.R. No. 187155, February 1, 2010, 611 SCRA 250, 256.

has failed to show that the trial court misappreciated any of the facts before it; thus, there is no need to deviate from the established doctrine.

Accused-appellant also questions the finding that treachery attended the killings, qualifying the crime to murder, instead of homicide. To support this argument, he points out the failure of the prosecution to prove that an iron pipe was used in killing Jose Bersero and Edwin Lucas. It was pointed out that the weapon was not retrieved or presented in evidence, nor was the medico-legal officer certain if an iron pipe would cause the injuries suffered by the victims.

Accused-appellant misses the point entirely.

Whether or not an iron pipe was used to kill Jose Bersero and Edwin Lucas is irrelevant. It was the testimony of Roger Lara that accused-appellant killed Jose Bersero and Edwin Lucas by hitting them with an iron pipe while they were sleeping. It is beyond argument that the unconscious victims would have been unable to defend themselves from the attack of the accused, regardless of the weapon used. Article 14, paragraph 16(2) of the Revised Penal Code provides, "There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." This precisely covers the situation that accused-appellant took advantage of, when he attacked the victims while they were sleeping. The essence of treachery is the sudden and unexpected attack by the aggressor on unsuspecting victims, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims.[25]

The RTC was correct in appreciating the circumstance of treachery accompanying the act, which qualifies the killing to murder under the first paragraph of Art. 248 of the Revised Penal Code, not homicide.

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[25] *People v. Gutierrez*, G.R. No. 188602, February 24, 2010, 611 SCRA 633, 644.

Anent the damages awarded in Criminal Case Nos. Q-94-56820 and Q-94-56821 by the trial court as adjusted by the CA, they should be modified.

In Criminal Case No. Q-94-56820, the CA only awarded the reduced civil indemnity of PhP 50,000 to the heirs of Edwin Lucas *y* Simon without handing out moral and exemplary damages. Of course in murder, the grant of civil indemnity, which has been fixed by jurisprudence at PhP 50,000, requires no proof other than the fact of death as a result of the crime and proof of the accused's responsibility for it.[26] On the other hand, moral damages of PhP 50,000 are awarded in view of the violent death of the victim which does not necessitate any allegation or proof of the emotional sufferings of the heirs. Likewise, in line with prevailing jurisprudence, the heirs of Edwin Lucas y Simon are also entitled to an award of PhP 30,000 as exemplary damages, because the commission of the crime of murder was attended by an aggravating circumstance whether ordinary or qualifying, as in this case.[27] Art. 2230 of the Civil Code provides:

> In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances.

With respect to the dispositions in Criminal Case No. Q-94-56821, the award of PhP 25,000 as moral damages shall be raised to PhP 50,000, and the amount of PhP 30,000 shall be awarded as exemplary damages in lieu of the previous CA award of PhP 25,000 in accordance with current jurisprudence.[28]

Likewise, the PhP 25,000 in damages awarded by the CA was mislabeled in the dispositive portion as "actual damages," whereas these were properly called "temperate damages" in the body of the CA decision. Art. 2224 of the Civil Code provides,

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[26] *Id.* at 646-647.

[27] *Id.* at 647.

[28] *People v. Dalisay*, G.R. No.188106, November 25, 2009, 605 SCRA 807, 816, 821.

"Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty." This amount of PhP 25,000 was awarded by the CA to the victim's families in lieu of actual damages, as the families failed to present proof of burial as well as medical expenses.

Accused-appellant has been proved to be guilty beyond reasonable doubt of the crimes charged, and must answer for all the effects of his conviction.

**WHEREFORE,** the Court *AFFIRMS* with modification the Decision dated December 15, 2009 of the CA in CA-G.R. CR-H.C. No. 02948. As modified, the CA Decision shall now read:

WHEREFORE, the judgment is hereby rendered sentencing ROEL "RUEL" SALLY, to suffer the penalty of *Reclusion Perpetua* in Crim. Case No. Q-94-56820 and to pay the heirs of Edwin Lucas *y* Samson the sum of PhP 50,000 as civil indemnity, PhP 50,000 as moral damages and PhP 30,000 as exemplary damages;

In Crim. Case No. Q-94-56821, likewise, ROEL "RUEL" SALLY, is likewise sentenced to suffer the penalty of *Reclusion Perpetua* and to pay the heirs of Jose Bersero y Singco the sum of PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, PhP 30,000 as exemplary damages and PhP 25,000 as temperate damages.

**SO ORDERED.**

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

**THIRD DIVISION**

[G.R. No. 159230. October 18, 2010]

**B.E. SAN DIEGO, INC.,** *petitioner, vs.* **COURT OF APPEALS and JOVITA MATIAS,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; GEOGRAPHICAL DIVISIONS ARE AMONG MATTERS THAT COURTS SHOULD TAKE JUDICIAL NOTICE OF; PRESENT IN CASE AT BAR. —** The Court, however, does not find the testimony of an expert witness necessary to explain the discrepancy. The RTC declared that the discrepancy arose from the fact that Barrio Catmon was previously part of Barrio Tinajeros. The RTC has authority to declare so because this is a matter subject of mandatory judicial notice. Section 1 of Rule 129 of the Rules of Court includes geographical divisions as among matters that courts should take judicial notice of. Given that Barrio Tinajeros is adjacent to Barrio Catmon, we find it likely that, indeed, the two barrios previously formed one geographical unit. Even without considering judicial notice of the geographical divisions within a political unit, sufficient evidence exists supporting the RTC's finding that the subject property B. E. San Diego seeks to recover is the Barrio Catmon property in Matias' possession. TCT No. T-134756 identifies a property in Barrio Tinajeros as Lot No. 3, Block No. 13. Although B. E. San Diego's tax declaration refers to a property in Barrio Catmon, it nevertheless identifies it also as Lot No. 3, Block No. 13, covered by the same TCT No. T-134756. Indeed, both title and the tax declaration share the same boundaries to identify the property. With this evidence, the trial court judge can very well ascertain the facts to resolve the discrepancy, and dispense with the need for the testimony of an expert witness. Additionally, we agree with B. E. San Diego that Matias can no longer question the identity of the property it seeks to recover when she invoked *res judicata* as ground to dismiss the *accion publiciana* that is the root of the present petition. An allegation of *res judicata* necessarily constitutes an admission that the subject matter of the pending

suit (the *accion publiciana*) is the same as that in a previous one (the ejectment case). That Matias never raised the discrepancy in the location stated in B.E. San Diego's title and the actual location of the subject property in the ejectment suit bars her now from raising the same. Thus, the issue of identity of the subject matter of the case has been settled by Matias' admission and negates the defenses she raised against B. E. San Diego's complaint.

**2. ID.; CIVIL PROCEDURE; ACTIONS; ACTION FOR EJECTMENT AND *ACCION PUBLICIANA*, DISTINGUISHED. —** While there may be identity of parties and subject matter, there is no identity of cause of action between the two cases; an action for ejectment and *accion publiciana*, though both referring to the issue of possession, differ in the following manner: First, forcible entry should be filed within one year from the unlawful dispossession of the real property, while *accion publiciana* is filed a year after the unlawful dispossession of the real property. Second, **forcible entry is concerned with the issue of the right to the physical possession of the real property; in *accion publiciana*, what is subject of litigation is the better right to possession over the real property.** Third, an action for forcible entry is filed in the municipal trial court and is a summary action, while *accion publiciana* is a plenary action in the RTC.

**3. CIVIL LAW; PROPERTY; LAND REGISTRATION; NO TITLE TO REGISTER LAND IN DEROGATION OF THAT OF THE REGISTERED OWNER SHALL BE ACQUIRED BY PRESCRIPTION OR ADVERSE POSSESSION; APPLICATION IN CASE AT BAR. —** The settled doctrine in property law is that no title to register land in derogation of that of the registered owner shall be acquired by prescription or adverse possession. Even if the possession is coupled with payment of realty taxes, we cannot apply in Matias' case the rule that these acts combined constitute proof of the possessor's claim of title. Despite her claim of possession since 1954, Matias began paying realty taxes on the subject property only in 1974 – when B. E. San Diego filed an ejectment case against her husband/predecessor, Pedro Matias. Considering these circumstances, we find Matias' payment of realty taxes suspect. Matias cannot rely on the Miscellaneous Sales Application

and the local government permit issued in her favor; neither establishes a clear right in favor of Matias over the subject property. A sales application, in the absence of approval by the Bureau of Lands or the issuance of a sales patent, remains simply as an application that does not vest title in the applicant. The local government permit contained only a statement of the local executive that the case between the local government and B. E. San Diego was decided by a trial court in favor of the former.

**4. LABOR AND SOCIAL LEGISLATION; P.D. 1517 (URBAN LAND REFORM); NON-LEGITIMATE TENANT CANNOT AVAIL THE BENEFITS OF THE LAW NO MATTER HOW LONG THE POSSESSION OF THE SUBJECT PROPERTY WAS; CASE AT BAR. —** The tenants/occupants who have a right not to be evicted from urban lands "does not include those whose presence on the land is **merely tolerated and without the benefit of contract**, those who enter the land by force or deceit, or **those whose possession is under litigation**." At the time of PD 1517's enactment, there was already a pending ejectment suit between B. E. San Diego and Pedro Matias over the subject property. "Occupants of the land whose presence therein is devoid of any legal authority, or those whose contracts of lease were already terminated or had already expired, or whose possession is under litigation, are not considered 'tenants' under the [PD No. 1517]." The RTC correctly ruled that Matias cannot be considered a legitimate tenant who can avail the benefits of these laws no matter how long her possession of the subject property was.

**APPEARANCES OF COUNSEL**

*J. V. Natividad & Associates* for petitioner.
*Jason Christopher Rayos-Co* for private respondent.

## D E C I S I O N

**BRION,* *J.*:**

Petitioner B. E. San Diego, Inc. (*B.E. San Diego*) filed before the Court a petition for review on *certiorari*[1] assailing the September 25, 2002 decision[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 50213. The CA decision reversed the June 22, 1995 decision[3] of the Regional Trial Court (*RTC*) of Malabon, Branch 74, in Civil Case No. 1421-MN.[4] The RTC in turn granted the complaint for recovery of possession[5] instituted by B. E. San Diego against private respondent Jovita Matias (*Matias*).

## THE FACTS

B.E. San Diego alleged that it is the registered owner of a parcel of land *(subject property*) located in Hernandez Street, Catmon, Malabon, covered by Transfer Certificate of Title (*TCT*) No. T-134756 of the Register of Deeds of Caloocan, and delineated as Lot No. 3, Block No. 13, with an area of 228 square meters. B. E. San Diego claimed that Matias has been occupying the subject property for over a year without its authority or consent. As both its oral and written demands to vacate were left unheeded, B. E. San Diego filed a **complaint for the recovery of possession** of the subject property against Matias on March 15, 1990 before the RTC.[6]

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* Designated Acting Chairperson of the Third Division, per Special Order No. 906 dated October 13, 2010.

[1] *Rollo,* pp. 3-24.

[2] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justice Renato C. Dacudao and Associate Justice Mario L. Guariña concurring, *id.* at 29-35.

[3] Penned by Judge (now CA Associate Justice) Bienvenido L. Reyes, records, pp. 329-338.

[4] Also assailed in the present petition is the May 20, 2003 resolution of the CA, denying B. E. San Diego's motion for reconsideration of the September 25, 2002 decision, *rollo,* p. 37.

[5] Records, pp. 2-4.

[6] *Id.* at 2-4.

In her answer to the complaint, Matias alleged that she and her family have been living on the subject property since the 1950s on the basis of a written permit issued by the local government of Malabon in 1954.[7] Matias stated that she and her family have introduced substantial improvements on the subject property and have been regularly paying realty taxes thereon. She further claimed that she is a legitimate beneficiary of Presidential Decree (*PD*) No. 1517[8] and PD No. 2016,[9] which classified the subject property as part of the Urban Land Reform Zone (*ULRZ*) and an Area for Priority Development (*APD*).

More importantly, she questioned B. E. San Diego's claim over the subject property by pointing out that the title relied on by B. E. San Diego (TCT No. T-134756) covers a property located in Barrio *Tinajeros*, Malabon, while the subject property is actually located in Barrio *Catmon*, Malabon. Matias thus claimed that the property she is occupying in Barrio Catmon is different from the property that B. E. San Diego seeks to recover in the possessory action before the RTC.[10]

The RTC found no issue as to the identity of the property, ruling that the property covered by B. E. San Diego's TCT No. T-134756, located in Barrio Tinajeros, is the same property being occupied by Matias, located in Barrio Catmon. The RTC took judicial notice of the fact that Barrio Catmon was previously part of Barrio Tinajeros. It found that the Approved Subdivision Plan

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[7] *Payahag* dated December 24, 1954, *id.* at 277.

[8] Entitled "Proclaiming Urban Land Reform in the Philippines and Providing for the Implementing Machinery Thereof," Section 6 of which grants preferential rights to landless tenants/occupants to acquire land within urban land reform areas.

[9] Entitled "Prohibiting the Eviction of Occupant Families from Land Identified and Proclaimed as Areas for Priority Development (APD) or as Urban Land Reform Zones and Exempting Such Land from Payment of Real Property Taxes," Section 2 of which prohibits the eviction of qualified tenants/occupants.

[10] Records, pp. 12-16.

and tax declarations showed that the subject property is located in Barrio Catmon, Malabon. The RTC thus declared that B. E. San Diego sufficiently proved its right to recover possession of the subject property on the basis of its TCT No. T-134756. As opposed to B. E. San Diego's clear right, it found Matias' claimed of possession over the subject property as a long-time occupant and as a beneficiary of PD Nos. 1517 and 2016 unfounded.[11]

On appeal, the CA disagreed with the RTC's findings. It considered the discrepancy in the location significant and declared that this should have prompted the RTC to require an expert witness from the concerned government agency to explain the matter. Since it was undisputed that Matias was in actual possession of the subject property at the time of the filing of the complaint, the CA declared that her possession should have been upheld under Article 538 of the Civil Code.[12] The CA also upheld Matias' possession based on PD Nos. 1517 and 2016. [13]

As its motion for reconsideration of the CA's judgment was denied,[14] B. E. San Diego filed the present petition for review on *certiorari* under Rule 45 of the Rules of Court.

**THE PETITION FOR REVIEW ON *CERTIORARI***

B. E. San Diego contends that the CA erred in reversing the RTC's finding on the sole basis of a discrepancy, which it claims has been explained and controverted by the evidence it presented. It assails the CA decision for failing to consider the following evidence which adequately show that the property

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[11] *Id.* at 336-339.

[12] Art. 538. Possession as a fact cannot be recognized at the same time in two different personalities except in the cases of co-possession. Should a question arise regarding the fact of possession, the present possessor shall be preferred; if there are two possessors, the one longer in possession; if the dates of the possession are the same, the one who presents a title; and if all these conditions are equal, the thing shall be placed in judicial deposit pending determination of its possession or ownership through proper proceedings.

[13] *Rollo*, pp. 33-34.

[14] *Supra* note 4.

covered by its TCT No. T-134756 is the same property occupied by Matias:

a. TCT No. T-134756 issued in the name of B. E. San Diego, covering a property delineated as Lot No. 3, Block No. 13;

b. Approved Subdivision Plan showing Lot No. 3, Block No. 3 is situated in Barrio Catmon, Malabon;

c. Tax Declaration No. B-005-00296 issued in the name of B. E. San Diego, referring to a property covered by TCT No. T-134756;

d. Testimonial evidence of B. E. San Diego's witness that the property described in TCT No. T-134756 is the same property occupied by Matias; and

e. Judicial notice taken by the RTC of Malabon, based on public and common knowledge, that Barrio Catmon was previously part of Barrio Tinajeros, Malabon.

B. E. San Diego also alleges that Matias is estopped from alleging that the property she is occupying is different from the property covered by its TCT No. T-134756. Matias previously moved to dismiss its complaint for recovery of possession of the subject property (*accion publiciana*), raising *res judicata* as ground.[15] She alleged that the *accion publiciana*[16] is barred by the judgment in an earlier ejectment case,[17] as both involved the same parties, the *same subject matter*, and the same cause of action. The ejectment case involved a parcel of land covered by TCT No. T-134756, located at Hernandez Street, Barrio Catmon, Malabon; Matias never questioned the identity and location of the property in that case.[18] B. E. San Diego thus

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[15] Records, pp. 61-63.

[16] Civil Case No. 1421-MN.

[17] Civil Case No. 668-87 is one of the four ejectment cases instituted by B. E. San Diego against the Matias family before the Metropolitan Trial Court of Malabon, Branch 56.

[18] The RTC denied Matias' motion to dismiss in its Order dated March 5, 1991, records, pp. 95-96. The CA dismissed Matias' *certiorari* petition

contends that Matias, by raising the ground of *res judicata*, has impliedly admitted there is no difference in the subject matter of the two actions and, thus, could no longer question the identity and location of the subject property.

In controverting B. E. San Diego's petition, Matias relies on the same points that the CA discussed in its decision.

## THE COURT'S RULING

The Court finds the petition **meritorious**.

From the errors raised in the petition, what emerges as a primary issue is the **identity of the subject matter of the case** – ***whether the subject property that Matias occupies is the same as the property covered by B. E. San Diego's title.*** Our reading of the records discloses that the two are one and the same.

B. E. San Diego's TCT No. T-134756 refers to a property located in Barrio Tinajeros, Malabon, but the subject property sought to be recovered from Matias is in Barrio Catmon, Malabon. In ruling for Matias, the CA declared that this discrepancy should have been explained by an expert witness, which B. E. San Diego failed to present.

The Court, however, does not find the testimony of an expert witness necessary to explain the discrepancy. The RTC declared that the discrepancy arose from the fact that Barrio Catmon was previously part of Barrio Tinajeros. The RTC has authority to declare so because this is a matter subject of mandatory judicial notice. Section 1 of Rule 129 of the Rules of Court[19]

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(CA-G.R. No. 26172) assailing the denial of her motion to dismiss in its Order dated October 10, 1991, *id.* at 124.

[19] RULES OF COURT, Rule 129, Section 1. *Judicial notice, when mandatory.* – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

includes geographical divisions as among matters that courts should take judicial notice of. Given that Barrio Tinajeros is adjacent to Barrio Catmon,[20] we find it likely that, indeed, the two barrios previously formed one geographical unit.

Even without considering judicial notice of the geographical divisions within a political unit, sufficient evidence exists supporting the RTC's finding that the subject property B. E. San Diego seeks to recover is the Barrio Catmon property in Matias' possession. TCT No. T-134756 identifies a property in Barrio Tinajeros as Lot No. 3, Block No. 13. Although B. E. San Diego's tax declaration refers to a property in Barrio Catmon, it nevertheless identifies it also as Lot No. 3, Block No. 13, covered by the same TCT No. T-134756. Indeed, both title and the tax declaration share the same boundaries to identify the property. With this evidence, the trial court judge can very well ascertain the facts to resolve the discrepancy, and dispense with the need for the testimony of an expert witness.[21]

Additionally, we agree with B. E. San Diego that Matias can no longer question the identity of the property it seeks to recover when she invoked *res judicata* as ground to dismiss the *accion publiciana* that is the root of the present petition. An allegation of *res judicata* necessarily constitutes an admission that the subject matter of the pending suit (the *accion publiciana*) is the same as that in a previous one (the ejectment case).[22] That Matias never raised the discrepancy in the location

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[20] Malabon City map at http://www.kabeetmaps.com/flash/detail.php?name_id=1124592.

[21] Expert witnesses are not allowed to give opinion evidence if from the other evidence available, the judge can be put in possession of the facts. Such evidence, if permitted, would result in the substitution of the judgment of experts for that of the court, R. Francisco, *Evidence* (1994 ed.), pp. 351-352, citing McBain, *California Evidence Manual*, p. 278.

[22] For *res judicata* to apply, there must be (1) a former judgment or order that is final and executory, (2) rendered by a court that has jurisdiction over the subject matter and the parties, (3) the former judgment or order was resolved on the merits, and (4) there is **identity of parties, subject matter, and cause of action between the first and second actions,** see *Agustin v. de los Santos*, G.R. No. 168139, January 20, 2009, 576 SCRA 576, 586.

stated in B.E. San Diego's title and the actual location of the subject property in the ejectment suit bars her now from raising the same. Thus, the issue of identity of the subject matter of the case has been settled by Matias' admission and negates the defenses she raised against B. E. San Diego's complaint.

We then proceed to resolve the core issue of the *accion publiciana* –***who between the parties is entitled possession of the subject property.*** Notably, the judgment in the ejectment suit that B. E. San Diego previously filed against Matias is not determinative of this issue and will not prejudice B. E. San Diego's claim.[23] While there may be identity of parties and subject matter, there is no identity of cause of action between the two cases; an action for ejectment and *accion publiciana*, though both referring to the issue of possession, differ in the following manner:

> First, forcible entry should be filed within one year from the unlawful dispossession of the real property, while *accion publiciana* is filed a year after the unlawful dispossession of the real property. Second, **forcible entry is concerned with the issue of the right to the physical possession of the real property**; **in *accion publiciana,* what is subject of litigation is the better right to possession over the real property.** Third, an action for forcible entry is filed in the municipal trial court and is a summary action, while *accion publiciana* is a plenary action in the RTC.[24]

B. E. San Diego anchors it right to possess based on its ownership of the subject property, as evidenced by its title. Matias, on the other hand, relies on (1) the 1954 permit she secured from the local government of Malabon, (2) the Miscellaneous Sales Application, (3) the tax declarations and

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[23] The Metropolitan Trial Court (*MTC*) of Malabon, Branch 56, granted B. E. San Diego's ejectment complaint against Matias (see *rollo*, pp. 41-44). The RTC of Malabon, Branch 72, reversed the MTC's decision after finding that B. E. San Diego's complaint failed to allege that it had prior physical possession of the property (see records, pp. 64-66).

[24] *Regis v. CA*, G. R. No. 153914, July 31, 2007, 528 SCRA 611, 620; see also *Custodio v. Corrado*, G. R. No. 146082, July 30, 2004, 435 SCRA 500.

realty tax payments she made annually beginning 1974, (4) her standing as beneficiary of PD Nos. 1517 and 2016, and (5) her long possession of the subject property since 1954 up to the present. Unfortunately for Matias, her evidence does not establish a better right of possession over B. E. San Diego's ownership.

The settled doctrine in property law is that no title to register land in derogation of that of the registered owner shall be acquired by prescription or adverse possession.[25] Even if the possession is coupled with payment of realty taxes, we cannot apply in Matias' case the rule that these acts combined constitute proof of the possessor's claim of title.[26] Despite her claim of possession since 1954, Matias began paying realty taxes on the subject property only in 1974 – when B. E. San Diego filed an ejectment case against her husband/predecessor, Pedro Matias.[27] Considering these circumstances, we find Matias' payment of realty taxes suspect.

Matias cannot rely on the Miscellaneous Sales Application and the local government permit issued in her favor; neither establishes a clear right in favor of Matias over the subject property. A sales application, in the absence of approval by the Bureau of Lands or the issuance of a sales patent, remains simply as an application that does not vest title in the applicant.[28] The local government permit contained only a statement of the local executive that the case between the local government

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[25] PD No. 1529, Section 47.

[26] Although tax declarations or realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof that the holder has a claim of title over the property, *Director of Lands v. CA*, G.R. No. 103949, June 17, 1999, 308 SCRA 317, 324-325, citing *Republic v. CA*, 258 SCRA 712 (1996).

[27] Civil Case No. 3667.

[28] *Javier v. CA*, G. R. No. 101177, March 28, 1994, 231 SCRA 498, 507.

and B. E. San Diego was decided by a trial court in favor of the former.[29]

The CA erroneously upheld Matias' claim of possession based on PD Nos. 1517 and 2016. Matias is not a qualified beneficiary of these laws. The tenants/occupants who have a right not to be evicted from urban lands "does not include those whose presence on the land is **merely tolerated and without the benefit of contract**, those who enter the land by force or deceit, or **those whose possession is under litigation**."[30] At the time of PD 1517's enactment, there was already a pending ejectment suit between B. E. San Diego and Pedro Matias over the subject property. "Occupants of the land whose presence therein is devoid of any legal authority, or those whose contracts of lease were already terminated or had already expired, or whose possession is under litigation, are not considered 'tenants' under the [PD No. 1517]."[31] The RTC correctly ruled that Matias cannot be considered a legitimate tenant who can avail the benefits of these laws no matter how long her possession of the subject property was.

**WHEREFORE**, we *GRANT* the petition for review on *certiorari*, and *REVERSE* the September 25, 2002 decision and May 20, 2003 resolution of the Court of Appeals in CA-G.R. CV No. 50213. The June 22, 1995 decision of the Regional Trial Court of Malabon in Civil Case No. 1421-MN is *REINSTATED*. Costs against the respondent.

**SO ORDERED.**

*Nachura,*[**] *Villarama, Jr., Mendoza,*[***] and *Sereno, JJ.*, concur.

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[29] *Supra* note 7.

[30] *Estreller v. Ysmael*, G. R. No. 170264, March 13, 2009, 581 SCRA 247, 256.

[31] *Ibid.*

[**] Designated Additional Member of the Third Division, per Special Order No. 907 dated October 13, 2010.

[***] Designated Additional Member of the Third Division, per Special Order No. 911 dated October 15, 2010.

**FIRST DIVISION**

[G.R. No. 164757. October 18, 2010]

**CEBU METRO PHARMACY, INC.,** *petitioner, vs.* **EURO-MED LABORATORIES, PHILIPPINES, INC.,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION AND CERTIFICATION AGAINST FORUM-SHOPPING; DISTINGUISHED. —** In explaining the requirement of verification and certification against forum-shopping and upholding the authority of the president of the corporation to execute the same *sans* proof of authority, this Court has this to say: A pleading is verified by an affidavit that an affiant has read the pleading and that the allegations therein are true and correct as to his personal knowledge or based on authentic records. The party does not need to sign the verification. A party's representative, lawyer, or any person who personally knows the truth of the facts alleged in the pleading may sign the verification. On the other hand, a certification of non-forum shopping is a certification under oath by the plaintiff or principal party in the complaint or other initiatory pleading, asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith, that (a) he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

**2. ID.; ID.; ID.; ID.; IT IS SETTLED IN NUMEROUS DECISIONS THAT THE PRESIDENT OF A CORPORATION MAY SIGN THE VERIFICATION AND THE CERTIFICATION OF NON-FORUM SHOPPING; SUSTAINED. —** It is true that the power

of a corporation to sue and be sued is lodged in the board of directors that exercises its corporate powers. However, it is settled – and we have so declared in numerous decisions – that the president of a corporation may sign the verification and the certification of non-forum shopping. In *Ateneo de Naga University v. Manalo*, we held that the lone signature of the University President was sufficient to fulfill the verification requirement, because such officer had sufficient knowledge to swear to the truth of the allegations in the petition. In *People's Aircargo and Warehousing Co., Inc. v. CA*, we held that in the absence of a charter or by-law provision to the contrary, the president of a corporation is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties. Moreover, even if a certain contract or undertaking is outside the usual powers of the president, the corporation's ratification of the contract or undertaking and the acceptance of benefits therefrom make the corporate president's actions binding on the corporation. Moreover, this Court's pronouncement in *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue* reiterated in *PNCC Skyway Traffic Management and Security Division Workers Organization v. PNCC Skyway Corporation* and *Mid-Pasig Land Development Corporation v. Tablante*, on the authority of certain officers and employees of the corporation to sign the verification and certification of non-forum shopping is likewise significant, to wit: It must be borne in mind that Sec. 23, in relation to Sec. 25 of the Corporation Code, clearly enunciates that all corporate powers are exercised, all business conducted, and all properties controlled by the board of directors. A corporation has a separate and distinct personality from its directors and officers and can only exercise its corporate powers through the board of directors. Thus, it is clear that an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors. This has been our constant holding in cases instituted by a corporation. In a slew of cases, however, we have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. In *Mactan-Cebu International Airport Authority v. CA*, we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum

shopping; in *Pfizer v. Galan*, we upheld the validity of a verification signed by an "employment specialist" who had not even presented any proof of her authority to represent the company; in *Novelty Philippines Inc., v. CA*, we ruled that a personnel officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate; and in *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd. (Lepanto)*, we ruled that the Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping even without the submission of the board's authorization. In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case. While the above cases do not provide a complete listing of authorized signatories to the verification and certification required by the rules, the determination of the sufficiency of the authority was done on a case to case basis. The rationale applied in the foregoing cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping, being 'in a position to verify the truthfulness and correctness of the allegations in the petition.'

**3. ID.; APPEALS; COURTS MUST PROCEED WITH CAUTION SO AS NOT TO DEPRIVE A PARTY OF STATUTORY APPEAL. —** As a final note, it is worthy to emphasize that the dismissal of an appeal on a purely technical ground is frowned upon especially if it will result in unfairness. The rules of procedure ought not to be applied in a very rigid, technical sense for they have been adopted to help secure, not override, substantial justice. For this reason, courts must proceed with caution so as not to deprive a party of statutory appeal; rather they must ensure that all litigants are granted the amplest opportunity for the proper and just ventilation of their causes, free from the constraint of technicalities.

**APPEARANCES OF COUNSEL**

*Virgilio M. Toribio* for petitioner.
*Gilda E. Guillermo* for respondent.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

Over time, this Court has been persistently confronted with issues involving the requirement of verification and certification against forum-shopping such as in the case at bar.

This Petition for Review on *Certiorari* assails the Resolutions dated May 6, 2004[1] and June 30, 2004[2] of the Court of Appeals (CA) in CA-G.R. SP No. 83669, which respectively dismissed the Petition for Review before it and denied the motion for reconsideration thereto.

***Factual Antecedents***

Respondent Euro-Med Laboratories Philippines, Inc. (Euro-Med) filed on February 19, 2001 a Complaint for Sum of Money[3] against petitioner Cebu Metro Pharmacy, Inc. (Cebu Metro) before the Municipal Trial Court in Cities (MTCC) of Cebu City. Euro-Med sought to recover from Cebu Metro the amount of ₱120,219.88 with interest as payment for the various intravenous fluids products which the latter purchased from the former on several occasions, as well as liquidated damages and attorney's fees.

Cebu Metro on the other hand, while admitting the obligation, raised in its Answer with Counterclaim[4] the following special and affirmative defenses: (1) that Euro-Med has no cause of action against it as it was Cebu Metro's former president and

[1] *Rollo*, p. 23; penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Isaias P. Dicdican and Ramon M. Bato, Jr.

[2] *Id.* at 24-25.

[3] CA *rollo*, pp. 36-39.

[4] *Id.* at 49-58.

manager, Manolito Martinez (Martinez), who entered into a contract with Euro-Med without the approval of its Board of Directors; (2) that the complaint is already barred by laches considering that it was only after five years from the date of the last delivery that Euro-Med demanded payment from Cebu Metro; and, (3) that Euro-Med's branch in Cebu and its salesman committed fraud when they conspired with Martinez by dividing the commission obtained from the subject transaction among themselves. Cebu Metro claimed that said unauthorized and fraudulent transaction was prejudicial to it as same caused it to incur liability with mounting interests.

***Rulings of the Municipal Trial Court in Cities and the Regional Trial Court (RTC)***

Resolving the case in favor of Euro-Med in a Decision[5] dated May 6, 2003, the MTCC of Cebu City, Branch 5 ruled that aside from Cebu Metro's admission of its obligation, Euro-Med was able to prove by testimonial and documentary evidence the existence of said obligation. Unfortunately for Cebu Metro, all that it was able to put forward for its defense were mere allegations. Hence, the MTCC rendered judgment ordering Cebu Metro to pay Euro-Med the amount of ₱117,219.88 plus interest, attorney's fees and litigation expenses. Cebu Metro appealed to the RTC.

On April 1, 2004, the RTC, Branch 20 of Cebu City rendered its Decision[6] dismissing Cebu Metro's appeal and affirming *in toto* the appealed MTCC Decision.

Unfazed, Cebu Metro went to the CA by way of Petition for Review.

***Ruling of the Court of Appeals***

The CA refused to give due course to the petition on the ground that the verification and certification of non-forum shopping attached thereto was signed by one Carmel T. Albao (Albao), Manager of Cebu Metro, without any accompanying

[5] *Id.* at 137-142; penned by Judge Oscar D. Andrino.

[6] *Id.* at 189-191; penned by Judge Bienvenido R. Saniel, Jr.

Secretary's Certificate/Board Resolution authorizing her to execute said verification and certification and to represent Cebu Metro in the petition. The CA thus dismissed the petition pursuant to Section 5, Rule 45 of the Rules of Court[7] in a Resolution[8] dated May 6, 2004.

Cebu Metro filed a Motion for Reconsideration attaching therewith a Secretary's Certificate[9] attesting to the approval of Board Resolution No. 2001-06, the pertinent portions of which read as follows:

Resolution No. 2001-06

RESOLUTION AUTHORIZING CARMEL T. ALBAO, NEWLY ELECTED PRESIDENT AND MANAGER OF CEBU METRO PHARMACY, INC. TO REPLACE RODOLFO P. MACACHOR WHO IS GRAVELY SICK AND CONSIDERED RESIGNED, TO REPRESENT FOR AND BEHALF [sic] OF THE CORPORATION

WHEREAS, in a Resolution No. 2001-03 unanimously approved by the Board in its Regular Meeting held on September 22, 2001 x x x the appointment of Rodolfo P. Macachor who was then the President and Manager of Cebu Metro Pharmacy, Inc., to represent for and behalf [sic] of the Corporation in Civil Case for Sum of Money filed by Euro-Med Laboratories Phil., Inc. before the Municipal Trial Court in Cities, Branch 5, Cebu City docketed as Civil Case No. R-44430;

WHEREAS, Rodolfo P. Macachor suffered an Asthma Attack on October 17, 2001 and has been in a comatose condition. He was previously confined at Chong Hua Hospital and later transferred to Danao District Hospital;

[7] The CA erroneously cited as ground for the dismissal of the petition Sec. 5, Rule 45 of the Rules of Court which is applicable only to Appeals by *Certiorari* to the Supreme Court. The petition should have been dismissed pursuant to Rule 42 which governs petitions for review from the RTC to the CA, specifically Sec. 3 thereof, to wit:

*Effect of failure to comply with requirements.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

[8] *Rollo,* p. 23.

[9] CA *rollo*, p. 204.

WHEREAS, Rodolfo P. Macachor being gravely sick should be considered resigned from the service;

WHEREAS, CARMEL T. ALBAO, who is equally competent to handle the job as President and Manager of the Corporation has sufficient knowledge to run the affairs of the corporation and to defend the corporation in the abovementioned civil case.

Now, therefore, on motion by Teresito Gulfan and unanimously seconded by all other members of the Board present,

***Resolve to authorize CARMEL T. ALBAO, newly elected President and Manager of Cebu Metro Pharmacy, Inc. to replace Rodolfo P. Macachor to represent for and behalf [sic] of the corporation in the court hearings in Civil Case No. R-44430 For: Sum of Money before the Municipal Trial Court in Cities, Branch 5, Cebu City.*** (Emphasis ours)

xxx x x x xxx

Also attached to said Motion for Reconsideration is a Secretary's Certificate[10] likewise confirming the approval of Board Resolution No. 2001-03 which authorized Rodolfo P. Macachor, then President and Manager of Cebu Metro, to represent Cebu Metro in the aforementioned Civil Case.

The CA, however, denied the Motion for Reconsideration in a Resolution dated June 30, 2004,[11] the pertinent portions of which read:

xxx x x x xxx

A perusal of the attached certification shows that Carmel Albao's authority is only to represent petitioner corporation in the court hearings in Civil Case No. R-44430 before the Municipal Trial Court in Cities, Branch 5, Cebu City and not to represent petitioner corporation in the present petition.

WHEREFORE, the motion for reconsideration is hereby DENIED and our resolution dismissing the petition STANDS.

Still undeterred, Cebu Metro comes before this Court through this Petition for Review on *Certiorari*.

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[10] *Id.* at 205.

[11] *Rollo,* pp. 24-25.

**Issues**

Cebu Metro raises the following issues:

1. WHETHER THE RESOLUTION OF THE BOARD OF DIRECTORS OF PETITIONER CEBU METRO PHARMACY, INC. AUTHORIZING CARMEL T. ALBAO TO REPRESENT PETITIONER CORPORATION IN THE COURT HEARINGS IN CIVIL CASE NO. R-44430 BEFORE THE MUNICIPAL TRIAL COURT IN CITIES, BRANCH 5, CEBU CITY ALSO INCLUDES THE AUTHORITY TO REPRESENT PETITIONER CORPORATION IN ALL OTHER COURT PROCEEDINGS INCLUDING THE AUTHORITY TO VERIFY AND TO ISSUE A CERTIFICATE OF NON-FORUM SHOPPING UNTIL THE CASE IS FINALLY TERMINATED; AND,
2. IF, IN THE NEGATIVE, CAN THE DEFICIENCY BE CURED BY A SUBSEQUENT BOARD RESOLUTION OF THE PETITIONER-CORPORATION AFFIRMING AND CONFIRMING THE ACTS DONE BY CARMEL T. ALBAO WHO IS ITS PRESIDENT AND MANAGER IN FILING AN APPEAL BEFORE THE REGIONAL TRIAL COURT AND THE PETITION FOR REVIEW BEFORE THE COURT OF APPEALS.[12]

***The Parties' Arguments***

Cebu Metro claims that its Board of Directors did not pass another resolution authorizing Albao to file an appeal before the RTC and the CA because it felt that the authority it granted her is already sufficient. Besides, even without such resolution, Cebu Metro insists that the CA should have considered the fact that Albao is both the President and Manager of Cebu Metro. As President, Albao has the power of general supervision and control of the business and all acts done by her as president is presumed to be duly authorized unless the contrary appears. As Manager, she likewise has the implied authority to make any contract or do any other act which is necessary or appropriate to the conduct of the ordinary business of the corporation. It also alleges that Article V, Section 3(h) of its By-Laws provides

[12] *Id.* at 9.

that its President has the power to represent the corporation in all functions and proceedings. Hence, there was no need for a board resolution conferring authority upon Albao to sign the certification and verification against forum shopping attached to the Petition for Review filed before the CA.

Moreover, Cebu Metro begs for leniency and asks this Court to set aside rules of technicalities, praying that the main case be resolved on the merits in the interest of substantial justice. Further, in an attempt to substantially comply with the requirements, Cebu Metro attaches to the present petition a Secretary's Certificate showing the approval of Resolution No. 2004-05 which authorizes Albao to represent the corporation in appealing the MTCC Decision in Civil Case No. R-44430 to the RTC, the CA and this Court.

Euro-Med, on the other hand, points out that Cebu Metro's Board Resolution No. 2001-06 is categorical in stating that Albao, as newly elected President and Manager of Cebu Metro, is authorized by the board to replace Rodolfo P. Macachor in representing the corporation *only* in the court hearings in Civil Case No. R-44430 for Sum of Money before the MTCC. It being clear from the wordings of said board resolution that Albao's authority is limited as such, Euro-Med insists that there can be no room for speculation that the same also includes the authority to execute the verification and certification of non-forum shopping should the case be brought on appeal. It is Euro-Med's position, therefore, that the CA correctly dismissed Cebu Metro's petition for review.

**Our Ruling**

We grant the petition.

In *Hutama-RSEA/Super Max Phils., J.V. v. KCD Builders Corporation*,[13] Hutama as petitioner therein questioned the verification and certification on non-forum shopping of respondent KCD which the latter attached to its Complaint for Sum of Money filed before the RTC. According to Hutama, KCD's

[13] G.R. No. 173181, March 3, 2010.

president did not present any proof that he is authorized by the corporation to sign the verification and certification of non-forum shopping. In explaining the requirement of verification and certification against forum-shopping and upholding the authority of the president of the corporation to execute the same *sans* proof of authority, this Court has this to say:

> A pleading is verified by an affidavit that an affiant has read the pleading and that the allegations therein are true and correct as to his personal knowledge or based on authentic records. The party does not need to sign the verification. A party's representative, lawyer, or any person who personally knows the truth of the facts alleged in the pleading may sign the verification.
>
> On the other hand, a certification of non-forum shopping is a certification under oath by the plaintiff or principal party in the complaint or other initiatory pleading, asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith, that (a) he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> It is true that the power of a corporation to sue and be sued is lodged in the board of directors that exercises its corporate powers. However, it is settled – and we have so declared in numerous decisions – that the president of a corporation may sign the verification and the certification of non-forum shopping.
>
> In *Ateneo de Naga University v. Manalo*, we held that the lone signature of the University President was sufficient to fulfill the verification requirement, because such officer had sufficient knowledge to swear to the truth of the allegations in the petition.
>
> In *People's Aircargo and Warehousing Co., Inc. v. CA*, we held that in the absence of a charter or by-law provision to the contrary, the president of a corporation is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties. Moreover, even if a

certain contract or undertaking is outside the usual powers of the president, the corporation's ratification of the contract or undertaking and the acceptance of benefits therefrom make the corporate president's actions binding on the corporation. (Citations omitted.)

Moreover, this Court's pronouncement in *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue,*[14] reiterated in *PNCC Skyway Traffic Management and Security Division Workers Organization v. PNCC Skyway Corporation*[15] and *Mid-Pasig Land Development Corporation v. Tablante,*[16] on the authority of certain officers and employees of the corporation to sign the verification and certification of non-forum shopping is likewise significant, to wit:

It must be borne in mind that Sec. 23, in relation to Sec. 25 of the Corporation Code, clearly enunciates that all corporate powers are exercised, all business conducted, and all properties controlled by the board of directors. A corporation has a separate and distinct personality from its directors and officers and can only exercise its corporate powers through the board of directors. Thus, it is clear that an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors. This has been our constant holding in cases instituted by a corporation.

In a slew of cases, however, we have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. In *Mactan-Cebu International Airport Authority v. CA*, we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum shopping; in *Pfizer v. Galan*, we upheld the validity of a verification signed by an "employment specialist" who had not even presented any proof of her authority to represent the company; in *Novelty Philippines Inc., v. CA*, we ruled that a personnel officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate; and in *Lepanto Consolidated Mining Company*

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[14] G.R. No. 151413, February 13, 2008, 545 SCRA 10, 17-19.

[15] G.R. No. 171231, February 17, 2010.

[16] G.R. No. 162924, February 4, 2010, 611 SCRA 528.

*v. WMC Resources International Pty. Ltd. (Lepanto),* we ruled that the Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping even without the submission of the board's authorization.

In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.

While the above cases do not provide a complete listing of authorized signatories to the verification and certification required by the rules, the determination of the sufficiency of the authority was done on a case to case basis. The rationale applied in the foregoing cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping, being 'in a position to verify the truthfulness and correctness of the allegations in the petition'. (Citations omitted.)

From the foregoing, it is clear that Albao, as President and Manager of Cebu Metro, has the authority to sign the verification and certification of non-forum shopping even without the submission of a written authority from the board. As the corporation's President and Manager, she is in a position to verify the truthfulness and correctness of the allegations in the petition. In addition, such an act is presumed to be included in the scope of her authority to act within the domain of the general objectives of the corporation's business and her usual duties in the absence of any contrary provision in the corporation's charter or by-laws. Having said this, there is therefore no more need to discuss whether the authority granted to Albao under Board Resolution No. 2001-06 is only limited to representing Cebu Metro in the court hearings before the MTCC or extends up to signing of the verification and certification of non-forum shopping on appeal. Again, even without such proof of authority, Albao, as Cebu Metro's President and Manager, is justified in signing said verification and certification. Thus, the CA should not have considered as fatal Cebu Metro's failure to attach a Secretary's Certificate attesting to Albao's authority to sign the verification and certification

of non-forum shopping and dismissed the petition or should have reinstated the same after Cebu Metro's submission of the Secretary's Certificate showing that Board Resolution No. 2001-06 confirmed the election of Albao as the corporation's President and Manager.

Moreover, the fact that the Board of Directors of Cebu Metro ratified Albao's authority to represent the corporation in the appeal of the MTCC Decision in Civil Case No. R-44430 before the RTC, CA, and this Court, and consequently to sign the verification and certification on its behalf by the passage of Resolution No. 2004-05 confirming and affirming her authority only gives this Court more reason to uphold such authority.

As a final note, it is worthy to emphasize that the dismissal of an appeal on a purely technical ground is frowned upon especially if it will result in unfairness. The rules of procedure ought not to be applied in a very rigid, technical sense for they have been adopted to help secure, not override, substantial justice. For this reason, courts must proceed with caution so as not to deprive a party of statutory appeal; rather they must ensure that all litigants are granted the amplest opportunity for the proper and just ventilation of their causes, free from the constraint of technicalities.[17]

**WHEREFORE,** the petition is *GRANTED*. The assailed Resolutions of the Court of Appeals dated May 6, 2004 and June 30, 2004 in CA-G.R. SP No. 83669 are *REVERSED and SET ASIDE*. Let the records of this case be *REMANDED* to the Court of Appeals which is hereby *DIRECTED* to take appropriate action thereon in light of the foregoing discussion with *DISPATCH*.

**SO ORDERED**.

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

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[17] *Mid-Pasig Land Development Corporation v. Tablante*, *supra* note 15 at 534.

**FIRST DIVISION**

[G.R. No. 170073. October 18, 2010]

**SPOUSES RAMY and ZENAIDA PUDADERA,** *petitioners, vs.* **IRENEO MAGALLANES and the late DAISY TERESA CORTEL MAGALLANES substituted by her children, NELLY M. MARQUEZ, ELISEO MAGALLANES and ANGEL MAGALLANES,** *respondents.*

**SYLLABUS**

**1. CIVIL LAW; PROPERTY; BUYER IN BAD FAITH; ONE WHO BUYS A PROPERTY WITH KNOWLEDGE OF FACTS WHICH SHOULD PUT HIM UPON INQUIRY OR INVESTIGATION AS TO A POSSIBLE DEFECT IN THE TITLE OF THE SELLER ACTS IN BAD FAITH; PRESENT IN CASE AT BAR. —** Based on these established facts, petitioners correctly argue that the said notice of *lis pendens* cannot be made the basis for holding that they are buyers in bad faith. Indeed, at the time of the sale of the subject lot by Spouses Natividad to petitioners on July 7, 1986, the civil case filed by Magallanes against Spouses Natividad had long been dismissed for lack of jurisdiction and the said order of dismissal had become final and executory. In *Spouses Po Lam v. Court of Appeals*, the buyers similarly bought a property while a notice of *lis pendens* was subsisting on its title. Nonetheless, we ruled that the buyers cannot be considered in bad faith because the alleged flaw, the notice of *lis pendens*, was already being ordered cancelled at the time of the sale and the cancellation of the notice terminated the effects of such notice.

**2. ID.; ID.; RULE ON DOUBLE SALES, CONSTRUED. —** Thus, in case of a double sale of immovables, ownership shall belong to "(1) the first registrant in good faith; (2) then, the first possessor in good faith; and (3) finally, the buyer who in good faith presents the oldest title." However, mere registration is not enough to confer ownership. The law requires that the second buyer must have acquired and registered the immovable property in good faith. In order for the second buyer to displace

the first buyer, the following must be shown: "(1) the second buyer must show that he acted in good faith (*i.e.*, in ignorance of the first sale and of the first buyer's rights) from the time of acquisition until title is transferred to him by registration or failing registration, by delivery of possession; and (2) the second buyer must show continuing good faith and innocence or lack of knowledge of the first sale until his contract ripens into full ownership through prior registration as provided by law."

**3. ID.; ID.; BUYER IN GOOD FAITH; EXPLAINED. —** One is considered a purchaser in good faith if he buys the 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. Well-settled is the rule that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property. "However, this rule shall not apply 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 of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation." "His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's title will not make him an innocent purchaser for value if it later develops that the title was in fact defective, and it appears that he had such notice of the defect had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation." In the case at bar, both the trial court and CA found that petitioners were not buyers and registrants in good faith owing to the fact that Magallanes constructed a fence and small hut on the subject lot and has been in actual physical possession since 1979. Hence, petitioners were aware or should have been aware of Magallanes' prior physical possession and claim of ownership over the subject lot when they visited the lot on several occasions prior to the sale thereof.

**4. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT; WHEN ACCORDED GREAT WEIGHT AND**

**RESPECT. —** The factual findings of the trial court are accorded great weight and respect and are even binding on this Court particularly where, as here, the findings of the trial and appellate courts concur. Although this rule is subject to certain exceptions, we find none obtaining in this case.

**5. ID.; ID.; BURDEN OF PROOF; THE BURDEN OF PROOF TO ESTABLISH THE STATUS OF A PURCHASER AND REGISTRANT IN GOOD FAITH LIES UPON THE ONE WHO ASSERTS IT. —** The evidence duly established that petitioners were aware of facts pointing to a possible flaw in the title of Spouses Natividad when they visited the subject lot on several occasions prior to the sale. This, by itself, was sufficient basis to rule that they acted in bad faith. Stated differently, the presence or absence of good faith on the part of Spouses Natividad during the second sale involving the subject lot will not erase the bad faith of petitioners in purchasing the subject lot from Spouses Natividad. x x x Time and again, we have ruled that the burden of proof to establish the status of a purchaser and registrant in good faith lies upon the one who asserts it. This *onus probandi* cannot be discharged by mere invocation of the legal presumption of good faith. In sum, petitioners were negligent in not taking the necessary steps to determine the status of the subject lot despite the presence of circumstances which would have impelled a reasonably cautious man to do so. Thus, we affirm the findings of the lower courts that they cannot be considered buyers and registrants in good faith. Magallanes, as the first buyer and actual possessor, was correctly adjudged by the trial court as the rightful owner of the subject lot and the conveyance thereof in favor of her heirs, herein respondents, is proper under the premises. In addition, the trial court should be ordered to cause the cancellation of TCT No. T-72734 by the Register of Deeds of Iloilo City and the issuance of a new certificate of title in the names of respondents. This is without prejudice to any remedy which petitioners may have against Spouses Natividad and/or Lazaro.

**6. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF, CONSTRUED. —** An award of attorney's fees is the exception rather than the rule. "The right to litigate is so precious that a penalty should not be charged on those who may exercise it erroneously." It is not given merely because

the defendant prevails and the action is later declared to be unfounded unless there was a deliberate intent to cause prejudice to the other party. We find the evidence of bad faith on the part of petitioners in instituting the subject action to be wanting. Thus, we delete the award of attorney's fees.

**APPEARANCES OF COUNSEL**

*Tirol and Tirol* for petitioner.
*Alfonso Debuque* for respondents.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

One is considered a buyer in bad faith not only when he purchases real estate with knowledge of a defect or lack of title in his seller but also when he has knowledge of facts which should have alerted him to conduct further inquiry or investigation.

This Petition for Review on *Certiorari* seeks to reverse and set aside the Court of Appeal's (CA's) June 6, 2005 Decision[1] in CA-G.R. CV No. 55850, which affirmed the September 3, 1996 Decision[2] of the Regional Trial Court (RTC) of Iloilo City, Branch 39 in Civil Case No. 22234. Likewise assailed is the September 20, 2005 Resolution[3] denying petitioners' motion for reconsideration.

***Factual Antecedents***

Belen Consing Lazaro (Lazaro) was the absolute owner of a parcel of land, Lot 11-E, with an area of 5,333 square meters (sq. m.) located in the District of Arevalo, Iloilo City and covered by Transfer Certificate of Title (TCT) No. T-51250. On March

[1] *Rollo*, pp. 10-17; penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Mercedes Gozo-Dadole and Ramon M. Bato, Jr.

[2] Records, pp. 271-282; penned by Judge Jose G. Abdallah.

[3] *Rollo*, p. 29; penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Vicente L. Yap and Ramon M. Bato, Jr.

13, 1979, Lazaro sold a 400 sq. m. portion of Lot 11-E to Daisy Teresa Cortel Magallanes (Magallanes) for the sum of ₱22,000.00 under a "Contract To Sale"[4] [sic] payable in two years. On July 21, 1980, upon full payment of the monthly installments, Lazaro executed a "Deed of Definite Sale"[5] in favor of Magallanes. Thereafter, Magallanes had the lot fenced and had a nipa hut constructed thereon.

The other portions of Lot 11-E were, likewise, sold by Lazaro to several buyers, namely, Elizabeth Norada, Jose Macaluda, Jose Melocoton, Nonilon Esteya, Angeles Palma, Medina Anduyan, Evangelina Anas and Mario Gonzales.[6] On July 14, 1980, Lazaro executed a "Partition Agreement"[7] in favor of Magallanes and the aforesaid buyers delineating the portions to be owned by each buyer. Under this agreement, Magallanes and Mario Gonzales were assigned an 800 sq. m. portion of Lot 11-E, with each owning 400 sq. m. thereof, denominated as Lot No. 11-E-8 in a Subdivision Plan[8] which was approved by the Director of Lands on August 25, 1980.

It appears that the "Partition Agreement" became the subject of legal disputes because Lazaro refused to turn over the mother title, TCT No. T-51250, of Lot 11-E to the aforesaid buyers, thus, preventing them from titling in their names the subdivided portions thereof. Consequently, Magallanes, along with the other buyers, filed an adverse claim with the Register of Deeds of Ilolilo City which was annotated at the back of TCT No. T-51250 on April 29, 1981.[9] Thereafter, Magallanes and Gonzales filed a motion to surrender title in Cadastral Case No. 9741 with the then Court of First Instance of Iloilo City, Branch 1

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[4] Records, p. 28; should be contract to sell as stated in the body of said contract and as per the terms thereof.

[5] *Id.* at 29.

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

[7] *Id.*

[8] *Id.* at 34.

[9] *Id.* at 26.

and caused the annotation of a notice of *lis pendens* at the back of TCT No. T-51250 on October 22, 1981.[10]

On November 23, 1981, Lazaro sold Lot 11-E-8, *i.e.*, the lot previously assigned to Magallanes and Mario Gonzales under the aforesaid "Partition Agreement," to her niece, Lynn Lazaro, and the latter's husband, Rogelio Natividad (Spouses Natividad), for the sum of ₱8,000.00.[11] As a result, a new title, TCT No. T-58606,[12] was issued in the name of Spouses Natividad. Due to this development, Magallanes pursued her claims against Spouses Natividad by filing a civil case for specific performance, injunction and damages. On September 2, 1983, Magallanes caused the annotation of a notice of *lis pendens* at the back of TCT No. T-58606.[13] Subsequently, Spouses Natividad subdivided Lot 11-E-8 into two, Lot 11-E-8-A and Lot 11-E-8-B, each containing 400 sq. m.

The civil case filed by Magallanes was later dismissed by the trial court for lack of jurisdiction as per an Order dated September 16, 1985 which was inscribed at the back of TCT No. T-58606 on July 7, 1986.[14] Four days prior to this inscription or on July 3, 1986, Spouses Natividad sold Lot 11-E-8-A (subject lot) to petitioner Ramy Pudadera (who later married petitioner Zenaida Pudadera on July 31, 1989) as evidenced by a "Deed of Sale"[15] for the sum of ₱25,000.00. As a consequence, a new title, TCT No. 72734,[16] was issued in the name of the latter.

Sometime thereafter Magallanes caused the construction of two houses of strong materials on the subject lot. On April 20, 1990, petitioners filed an action for forcible entry against Magallanes with the Municipal Trial Court in Cities of Iloilo

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[10] *Id.* at 27.

[11] *Id.* at 194.

[12] *Id.* at 137.

[13] *Id.*

[14] *Id.* at 138.

[15] *Id.* at 127.

[16] *Id.* at 5.

City, Branch 2. On July 17, 1991, the trial court dismissed the action.[17] It held that Magallanes was first in possession of the subject lot by virtue of the "Deed of Definite Sale" dated July 21, 1980 between Lazaro and Magallanes. After the aforesaid sale, Magallanes filled the lot with soil; put up a fence; and built a small hut thereon. On the other hand, the trial court found that when petitioner Ramy Pudadera bought the subject lot from Spouses Natividad on July 3, 1986, the former had notice that someone else was already in possession of the subject lot.

Having failed to recover the possession of the subject lot through the aforesaid forcible entry case, petitioners commenced the subject action for Recovery of Ownership, Quieting of Title and Damages against Magallanes and her husband, Ireneo, in a Complaint[18] dated February 25, 1995. Petitioners alleged that they are the absolute owners of Lot 11-E-8-A as evidenced by TCT No. T-72734; that Magallanes is also claiming the said lot as per a "Deed of Definite Sale" dated July 21, 1980; that the lot claimed by Magallanes is different from Lot 11-E-8-A; and that Magallanes constructed, without the consent of petitioners, several houses on said lot. They prayed that they be declared the rightful owners of Lot 11-E-8-A and that Magallanes be ordered to pay damages.

In her Answer,[19] Magallanes countered that she is the absolute lawful owner of Lot 11-E-8-A; that Lot 11-E-8-A belongs to her while Lot 11-E-8-B belongs to Mario Gonzales; that petitioners had prior knowledge of the sale between her and Lazaro; that she enclosed Lot 11-E-8-A with a fence, constructed a house and caused soil fillings on said lot which petitioners were aware of; and that she has been in actual possession of the said lot from March 11, 1979 up to the present. She prayed that TCT No. T-72734 in the name of petitioner Ramy Pudadera be cancelled and a new one be issued in her name.

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[17] *Id.* at 18-25.

[18] *Id.* at 1-4.

[19] *Id.* at 11-17.

During the pendency of this case, Magallanes passed away and was substituted by her heirs, herein respondents.

***Ruling of the Regional Trial Court***

On September 6, 1996, the trial court rendered judgment in favor of respondents, *viz*:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the [respondents] and against the [petitioners]:
>
> 1. Declaring the [respondent] Daisy Teresa Cortel Magallanes, substituted by her heirs, Nelly M. Magallanes, Eliseo Magallanes and Angel Magallanes and Ireneo Magallanes, as the rightful owners of Lot 11-E-8-A, Psd-06-002539, which is now covered by Transfer Certificate of Title No. T-72734, still in the name of Ramy Pudadera, situated in the District of Arevalo, Iloilo City, with an area of 400 square meters more or less;
>
> 2. The [petitioners] spouses Ramy Pudadera and Zenaida Pudadera are hereby ordered to execute the necessary Deed of Reconveyance in favor of the above-named parties, namely[,] Nelly M. Magallanes, Eliseo Magallanes, x x x Angel Magallanes, and Ireneo Magallanes;
>
> 3. Ordering the [petitioners] to pay jointly and severally the [respondents] the amount of ₱10,000.00 as attorney's fees and the costs of the suit.
>
> SO ORDERED.[20]

The trial court ruled that respondents are the rightful owners of the subject lot which was sold by Lazaro to their predecessor-in-interest, Magallanes, on July 21, 1980. When Lazaro sold the subject lot for a second time to Spouses Natividad on November 23, 1981, no rights were transmitted because, by then, Magallanes was already the owner thereof. For the same reason, when Spouses Natividad subsequently sold the subject lot to petitioners on July 3, 1986, nothing was transferred to the latter.

The trial court further held that petitioners cannot be considered buyers in good faith and for value because after

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[20] *Id.* at 282.

Magallanes bought the subject lot from Lazaro, Magallanes immediately took possession of the lot, and constructed a fence with barbed wire around the property. The presence of these structures should, thus, have alerted petitioners to the possible flaw in the title of the Spouses Natividad considering that petitioners visited the subject lot several times before purchasing the same. Neither can petitioners claim that the title of the subject lot was clean considering that a notice of *lis pendens* was annotated thereon in connection with a civil case that Magallanes filed against Spouses Natividad involving the subject lot. Although the notice of *lis pendens* was subsequently cancelled on July 7, 1986, the deed of sale between petitioners and Spouses Natividad was executed on July 3, 1986 or four days before said cancellation. Thus, petitioners had notice that the subject property was under litigation. Since respondents are the rightful owners of the subject lot, petitioners should execute a deed of conveyance in favor of the former so that a new title may be issued in the name of the respondents.

***Ruling of the Court of Appeals***

On June 6, 2005, the CA rendered the assailed Decision:

> WHEREFORE, with all the foregoing, the decision of the Regional Trial Court, Branch 39, Iloilo City dated September 3, 1996 in civil case no. 22234 for Quieting of Title, Ownership and Damages is hereby **AFFIRMED *in toto*.**
>
> All other claims and counterclaims are hereby dismissed for lack of factual and legal basis.
>
> No pronouncement as to cost.
>
> SO ORDERED.[21]

In affirming the ruling of the trial court, the appellate court reasoned that under the rule on double sale what finds relevance is whether the second buyer registered the second sale in good faith, that is, without knowledge of any defect in the title of the seller. Petitioners' predecessor-in-interest, Spouses Natividad, were not registrants in good faith. When Magallanes first bought

[21] *Rollo,* p. 16.

the subject lot from Lazaro on July 21, 1980, Magallanes took possession of the same and had it fenced and filled with soil. This was made way ahead of the November 23, 1981 Deed of Sale between Lazaro and Spouses Natividad. With so much movement and transactions involving the subject lot and given that Lyn Lazaro-Natividad is the niece of Lazaro, the appellate court found it hard to believe that the Spouses Natividad were completely unaware of any controversy over the subject lot.

The CA, likewise, agreed with the trial court that at the time petitioners acquired the subject lot from Spouses Natividad on July 3, 1986, a notice of *lis pendens* was still annotated at the back of TCT No. T-58606 due to a civil case filed by Magallanes against Spouses Natividad. Although the case was subsequently dismissed by the trial court for lack of jurisdiction, the notice of *lis pendens* was still subsisting at the time of the sale of the subject lot between Spouses Natividad and petitioners on July 3, 1986 because the *lis pendens* notice was cancelled only on July 7, 1986. Consequently, petitioners cannot be considered buyers and registrants in good faith because they were aware of a flaw in the title of the Spouses Natividad prior to their purchase thereof.

**Issues**

1. The Court of Appeals erred in not considering the judicial admissions of Magallanes as well as the documentary evidence showing that she was claiming a different lot, Lot No. 11-E-8-B, and not Lot 11-E-8-A which is registered in the name of petitioners under TCT No. T-72734, consequently, its findings that Magallanes is the rightful owner of Lot 11-E-8-A is contrary to the evidence on record;
2. The Court of Appeals erred in applying the principle of innocent purchasers for value and in good faith to petitioners. Granting that the said principle may be applied, the Court of Appeals erred in finding that petitioners are not innocent purchasers for value;

3. The Court of Appeals erred in affirming the award of attorney's fees against the petitioners.[22]

***Petitioners' Arguments***

Petitioners postulate that the subject lot is different from the lot which Magallanes bought from Lazaro. As per Magallanes' testimony in the ejectment case, she applied for the zoning permit for Lot 11-E-8-B and not Lot 11-E-8-A. Further, the tax declarations submitted in evidence therein showed that Magallanes paid for the real estate taxes of Lot 11-E-8-B and not Lot 11-E-8-A. Hence, there is no conflict of claims since petitioners are asserting their rights over Lot 11-E-8-A while respondents claim ownership over Lot 11-E-8-B. Moreover, assuming that there was a double sale, the same did not involve petitioners. The first sale was between Lazaro and Magallanes while the second sale was between Lazaro and Spouses Natividad. It was erroneous for the appellate court to conclude that Lyn Natividad was in bad faith simply because she is the niece of Lazaro. The Spouses Natividad were not impleaded in this case and cannot be charged as buyers in bad faith without giving them their day in court. Petitioners claim that respondents should first impugn the validity of Spouses Natividad's title by proving that the latter acted in bad faith when they bought the subject lot from Lazaro. Petitioners aver that the evidence on record failed to overcome the presumption of good faith. Considering that Spouses Natividad were buyers in good faith and considering further that petitioners' title was derived from Lazaro, petitioners should, likewise, be considered buyers in good faith.

Petitioners further argue that the rule on notice of *lis pendens* was improperly applied in this case. The trial court's order dismissing the civil case filed by Magallanes against Spouses Natividad had long become final and executory before petitioners bought the subject lot from Spouses Natividad. While it is true that the order of dismissal was annotated at the back of TCT No. T-58606 only on July 7, 1986 or four days after the sale

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[22] *Id.* at 44.

between Spouses Natividad and petitioners, the cancellation of the notice of *lis pendens* was a mere formality. In legal contemplation, the notice was, at the time of the sale on July 3, 1986, ineffective. Citing *Spouses Po Lam v. Court of Appeals*,[23] petitioners contend that the then existing court order for the cancellation of the *lis pendens* notice at the time of the sale made them buyers in good faith.

Finally, petitioners question the award of attorney's fees in favor of respondents for lack of basis. Petitioners claim that they should be awarded damages because respondents unlawfully prevented them from taking possession of the subject lot.

***Respondents' Arguments***

Respondents counter that they are in possession of, and claiming ownership over the subject lot, *i.e.*, Lot 11-E-8-A, and not Lot 11-E-8-B. The claim of petitioners that the subject lot is different from what respondents assert to be lawfully theirs is, thus, misleading. The subject lot was acquired by respondents' predecessor-in-interest, Magallanes, when Lazaro sold the same to Magallanes through a contract to sell in 1979 and a deed of sale in 1980 after full payment of the monthly installments.

After executing the contract to sell, Magallanes immediately took possession of the subject lot; constructed a fence with barbed wire; and filled it up with soil in preparation for the construction of concrete houses. She also built a nipa hut and stayed therein since 1979 up to her demise. Respondents emphasize that upon payment of the full purchase price under the contract to sell and the execution of the deed of sale, Magallanes undertook steps to protect her rights due to the refusal of Lazaro to surrender the mother title of the subject lot. Magallanes recorded an adverse claim at the back of the mother title of the subject lot and an initial notice of *lis pendens* thereon. She then filed a civil case against Lazaro, and, later on, against Lazaro's successors-in-interest, Spouses Natividad, which resulted in the inscription of a notice of *lis pendens* on

[23] 400 Phil. 858 (2000).

TCT No. 51250 and TCT No. T-58606. When petitioners bought the subject lot from Spouses Natividad on July 3, 1986, the said notice of *lis pendens* was subsisting because the court dismissal of said case was inscribed on the title only on July 7, 1986. Petitioners cannot, therefore, be considered buyers in good faith.

**Our Ruling**

We affirm the decision of the CA with modifications.

*Petitioners and respondents are claiming ownership over the same lot.*

Petitioners contend that they are claiming ownership over Lot 11-E-8-A while Magallanes' claim is over Lot 11-E-8-B. Thus, there is no conflict between their claims.

The argument is specious.

It is clear that Magallanes is claiming ownership over Lot 11-E-8-A and not Lot 11-E-8-B. In her Answer to the Complaint, she alleged that she is "the absolute lawful owner of Lot 11-E-8-A."[24] Her act of fencing Lot 11-E-8-A and constructing two houses of strong materials thereon further evince her claim of ownership over the subject lot. Thus, in the forcible entry case which petitioners previously filed against Magallanes involving the subject lot, the trial court noted:

> At the pre-trial conference held on June 13, 1990, both parties agreed to a relocation survey of the lot whereupon the Court commissioned the Bureau of Lands to undertake a relocation survey of the lot in question.
>
> On October 1, 1990, the Bureau of Lands thru Engr. Filomeno P. Daflo submitted the relocation survey report with the following findings: x x x
>
> x x x x x x x x x
>
> 5. That it was ascertained in our investigation that the entire lot occupied by [Magallanes] (lot 11-E-8-A) is the **very same lot** claimed

[24] Records, p. 11.

by the [petitioners], as pointed out by its representative.[25] (Emphasis supplied.)

After losing in the aforesaid forcible entry case, petitioners commenced the subject action for quieting of title and recovery of ownership over Lot 11-E-8-A. Plainly, both parties are asserting ownership over the same lot, *i.e.* Lot 11-E-8-A, notwithstanding the error in the entries made by Magallanes in her zoning application and tax declaration forms.

*The notice of lis pendens at the back of the mother title of the subject lot was already ordered cancelled at the time of the sale of the subject lot to petitioners, hence, said notice cannot be made a basis for finding petitioners as buyers in bad faith.*

A notice of *lis pendens* at the back of the mother title (*i.e.*, TCT No. T-58606) of Lot 11-E-8-A was inscribed on September 2, 1983 in connection with the civil case for specific performance, injunction and damages which Magallanes filed against Spouses Natividad. This case was subsequently dismissed by the trial court for lack of jurisdiction in an Order dated September 16, 1985 which has already become final and executory as per the Certification dated June 16, 1986 issued by the Branch Clerk of Court of the RTC of Iloilo City, Branch 33.[26] The aforesaid court dismissal was, however, inscribed only on July 7, 1986 or three days after the sale of the subject lot to petitioners.[27]

Based on these established facts, petitioners correctly argue that the said notice of *lis pendens* cannot be made the basis for holding that they are buyers in bad faith. Indeed, at the time of the sale of the subject lot by Spouses Natividad to petitioners on July 7, 1986, the civil case filed by Magallanes against Spouses

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[25] *Id.* at 19.

[26] *Id.* at 138.

[27] *Id.*

Natividad had long been dismissed for lack of jurisdiction and the said order of dismissal had become final and executory. In *Spouses Po Lam v. Court of Appeals*,[28] the buyers similarly bought a property while a notice of *lis pendens* was subsisting on its title. Nonetheless, we ruled that the buyers cannot be considered in bad faith because the alleged flaw, the notice of *lis pendens*, was already being ordered cancelled at the time of the sale and the cancellation of the notice terminated the effects of such notice.[29]

This notwithstanding, petitioners cannot be considered buyers in good faith because, as will be discussed hereunder, they were aware of *other* circumstances pointing to a possible flaw in the title of Spouses Natividad prior to the sale of the subject lot. Despite these circumstances, petitioners did not take steps to ascertain the status of the subject lot but instead proceeded with the purchase of the same.

*One who buys a property with knowledge of facts which should put him upon inquiry or investigation as to a possible defect in the title of the seller acts in bad faith.*

Lot 11-E-8, of which the subject lot (*i.e.*, Lot 11-E-8-A) forms part, was sold by Lazaro to two different buyers. As narrated earlier, Lot 11-E-8 is a portion of Lot 11-E, a 5,333 sq. m. lot covered by TCT No. T-51250. Lazaro subdivided the said lot and sold portions thereof to several buyers. One of these buyers was Magallanes who purchased a 400 sq. m. portion on March 13, 1979. The metes and bounds of this lot were later delineated in a "Partition Agreement" dated July 14, 1980 executed by Lazaro in favor of the aforesaid buyers. As per this agreement, Magallanes and Mario Gonzales were assigned Lot 11-E-8 comprising 800 sq. m with each owning a 400 sq. m. portion thereof. This was the first sale involving Lot 11-E-8.

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[28] *Supra* note 23.

[29] *Id.* at 871.

After the aforesaid sale, it appears Lazaro refused to turnover the mother title of Lot 11-E which resulted in the filing of legal suits by Magallanes and the other buyers against her (Lazaro). While these suits were pending, Lazaro sold Lot 11-E-8 to her niece Lynn and the latter's husband Rogelio Natividad on November 23, 1981. Consequently, a new title, TCT No. T-58606, was issued covering Lot 11-E-8 in the name of Spouses Natividad. This was the second sale of Lot 11-E-8.

Subsequently, Spouses Natividad subdivided Lot 11-E-8 into two, *i.e.*, Lot 11-E-8-A and Lot 11-E-8-B, with each containing 400 sq. m. On July 3, 1986, they sold Lot 11-E-8-A to petitioners. Lot 11-E-8-A is the 400 sq. m. portion of Lot 11-E-8 which Magallanes claims to be owned by her pursuant to the aforesaid "Partition Agreement" while the other half, Lot 11-E-8-B, pertains to the lot of Mario Gonzales.

The question before us, then, is who between petitioners and respondents have a better right over Lot 11-E-8-A?

Article 1544 of the Civil Code provides:

> Art. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.
>
> Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.
>
> Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

Thus, in case of a double sale of immovables, ownership shall belong to "(1) the first registrant in good faith; (2) then, the first possessor in good faith; and (3) finally, the buyer who in good faith presents the oldest title."[30] However, mere registration is not enough to confer ownership. The law requires that the

[30] *Spouses Abrigo v. De Vera*, 476 Phil. 641, 650 (2004).

second buyer must have acquired and registered the immovable property in good faith. In order for the second buyer to displace the first buyer, the following must be shown: "(1) the second buyer must show that he acted in good faith (*i.e.*, in ignorance of the first sale and of the first buyer's rights) from the time of acquisition until title is transferred to him by registration or failing registration, by delivery of possession; and (2) the second buyer must show continuing good faith and innocence or lack of knowledge of the first sale until his contract ripens into full ownership through prior registration as provided by law."[31]

One is considered a purchaser in good faith if he buys the 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.[32] Well-settled is the rule that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property.[33] "However, this rule shall not apply 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 of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation."[34] "His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's title will not make him an innocent purchaser for value if it later develops that the title was in fact defective, and it appears that he had such notice of the defect had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation."[35]

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[31] *Cheng v. Genato*, 360 Phil. 891, 910 (1998).

[32] *Hemedes v. Court of Appeals*, 374 Phil. 692, 719-720 (1999).

[33] *Id.* at 719.

[34] *Sigaya v. Mayuga*, 504 Phil. 600, 614 (2005).

[35] *Id.*

In the case at bar, both the trial court and CA found that petitioners were not buyers and registrants in good faith owing to the fact that Magallanes constructed a fence and small hut on the subject lot and has been in actual physical possession since 1979. Hence, petitioners were aware or should have been aware of Magallanes' prior physical possession and claim of ownership over the subject lot when they visited the lot on several occasions prior to the sale thereof. Thus, the trial court held:

> This Court believes the version of [Magallanes], that when she bought the property from [Lazaro], she took immediate possession of the 400-square meter portion and constructed a fence [with] barbed wire surrounding the said property. She also constructed a house made of nipa, bamboo and concrete materials. This fact was even confirmed by [petitioner] Zenaida Pudadera in her testimony.
>
> This Court cannot believe the testimony of [petitioner] Zenaida Pudadera that they were the ones who constructed the fence surrounding the 400-square meter portion, because there was already an existing fence made of bamboos and barbed wire put up by [Magallanes]. When the [petitioners] therefore, visited the land in question, several times before the purchase, particularly [petitioner] Ramy Pudadera, he must have seen the fence surrounding the property in question. He should have been curious why there was an existing fence surrounding the property? [sic] He should have asked or verified as to the status of the said property. A real estate buyer must exercise ordinary care in buying x x x real estate, especially the existence of the fence in this case which must have [alerted him to inquire] whether someone was already in possession of the property in question.[36]

We find no sufficient reason to disturb these findings. The factual findings of the trial court are accorded great weight and respect and are even binding on this Court particularly where, as here, the findings of the trial and appellate courts concur.[37] Although this rule is subject to certain exceptions, we find none obtaining in this case.

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[36] Records, pp. 278-279.

[37] *Uraca v. Court of Appeals*, 344 Phil. 253, 267 (1997).

Petitioners next argue that since the second sale involves Lazaro and their predecessor-in-interest, Spouses Natividad, due process requires that Spouses Natividad should first be allowed to establish that they (Spouses Natividad) are second buyers and first registrants in good faith before any finding on petitioners' own good faith can be made considering that they (petitioners) merely acquired their title from Spouses Natividad. Petitioners lament that Spouses Natividad were not impleaded in this case. Thus, the finding that petitioners acted in bad faith was improper.

The argument fails on two grounds.

First, as previously explained, the evidence duly established that petitioners were aware of facts pointing to a possible flaw in the title of Spouses Natividad when they visited the subject lot on several occasions prior to the sale. This, by itself, was sufficient basis to rule that they acted in bad faith. Stated differently, the presence or absence of good faith on the part of Spouses Natividad during the second sale involving the subject lot will not erase the bad faith of petitioners in purchasing the subject lot from Spouses Natividad.

Second, petitioners miscomprehend the right to due process. The records indicate that at no instance during the trial of this case were they prevented from presenting evidence, including the testimonies of Spouses Natividad, to support their claims. Thus, they were not denied their day in court. Petitioners seem to forget that they were the ones who filed this action to recover ownership and quiet title against Magallanes. If petitioners intended to bolster their claim of good faith by impleading the Spouses Natividad in this case, there was nothing to prevent them from doing so. Time and again, we have ruled that the burden of proof to establish the status of a purchaser and registrant in good faith lies upon the one who asserts it.[38] This *onus probandi* cannot be discharged by mere invocation of the legal presumption of good faith.[39]

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[38] *Supra* note 34 at 613.

[39] *Id.*

In sum, petitioners were negligent in not taking the necessary steps to determine the status of the subject lot despite the presence of circumstances which would have impelled a reasonably cautious man to do so. Thus, we affirm the findings of the lower courts that they cannot be considered buyers and registrants in good faith. Magallanes, as the first buyer and actual possessor, was correctly adjudged by the trial court as the rightful owner of the subject lot and the conveyance thereof in favor of her heirs, herein respondents, is proper under the premises. In addition, the trial court should be ordered to cause the cancellation of TCT No. T-72734 by the Register of Deeds of Iloilo City and the issuance of a new certificate of title in the names of respondents.[40] This is without prejudice to any remedy which petitioners may have against Spouses Natividad and/or Lazaro.

*The award of attorney's fees is improper.*

On the issue of the propriety of attorney's fees which the trial court awarded in favor of respondents, we are inclined to agree with petitioners that the same should be deleted for lack of basis. An award of attorney's fees is the exception rather than the rule.[41] "The right to litigate is so precious that a penalty should not be charged on those who may exercise it erroneously."[42] It is not given merely because the defendant prevails and the action is later declared to be unfounded unless there was a deliberate intent to cause prejudice to the other party.[43] We find the evidence of bad faith on the part of petitioners in instituting the subject action to be wanting. Thus, we delete the award of attorney's fees.

**WHEREFORE,** the petition is *PARTIALLY GRANTED*. The June 6, 2005 Decision and September 20, 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 55850 are *AFFIRMED*

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[40] *Bautista v. Court of Appeals*, 379 Phil. 386, 402 (2000).

[41] *Albenson Enterprises Corp. v. Court of Appeals*, G.R. No. 88694, January 11, 1993, 217 SCRA 16, 31.

[42] *De la Peña v. Court of Appeals*, G.R. No. 81827, March 28, 1994, 231 SCRA 456, 462.

[43] *Id*.

with the following *MODIFICATIONS*: (1) The Regional Trial Court of Iloilo City, Branch 39 is *ORDERED* to cause the cancellation by the Register of Deeds of Iloilo City of TCT No. T-72734 and the issuance, in lieu thereof, of the corresponding certificate of title in the names of respondents, heirs of Daisy Teresa Cortel Magallanes, and (2) The award of attorney's fees in favor of respondents is *DELETED*.

No pronouncement as to costs.

**SO ORDERED.**

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

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**SECOND DIVISION**

[G.R. No. 187032. October 18, 2010]

**EDGARDO M. PANGANIBAN,** *petitioner, vs.* **TARA TRADING SHIPMANAGEMENT, INC. and SHINLINE SDN BHD,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; PROPER REMEDY IN CASE AT BAR.—** Preliminarily, considering the grounds raised by petitioner, it appears that he denominated this petition as one under Rule 45, but he filed it as *both* a petition for review under Rule 45 *and* a petition for *certiorari* under Rule 65 of the Rules of Court. The applicable rule is Rule 45, which clearly provides that decisions, final orders or resolutions of the CA in any case, regardless of the nature of the action or proceeding involved, may be appealed to this Court through a petition for review. This

remedy is a continuation of the appellate process over the original case. Recourse under Rule 65 cannot be allowed either as an add-on or as a substitute for appeal.

**2. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; EVIDENCE REQUIRED TO PROVE THAT WORKING CONDITIONS HAVE CAUSED OR AT LEAST INCREASED THE RISK OF CONTRACTING THE DISEASE IN CASE AT BAR.—** It need not be overemphasized that in the absence of substantial evidence, working conditions cannot be accepted to have caused or at least increased the risk of contracting the disease, in this case, brief psychotic disorder. Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by law is real and not merely apparent.

**3. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; OVERSEAS EMPLOYMENT; POEA STANDARD EMPLOYMENT CONTRACT; COMPENSATION FOR DEATH OF SEAFARERS; LIABILITY OF THE EMPLOYER THEREFOR IS NOT AUTOMATIC; RELEVANT RULINGS, CITED.—** Even in case of death of a seafarer, the grant of benefits in favor of the heirs of the deceased is **not** automatic. As in the case of *Rivera* v. *Wallem Maritime Services, Inc*., without a post-medical examination or its equivalent to show that the disease for which the seaman died was contracted during his employment or that his working conditions increased the risk of contracting the ailment, the employer/s cannot be made liable for death compensation. In fact, in *Mabuhay Shipping Services, Inc. v. NLRC*, the Court held that the death of a seaman even during the term of employment does not automatically give rise to compensation. Several factors must be taken into account such as the circumstances which led to the death, the provisions of the contract, and the right and obligation of the employer and the seaman with due regard to the provisions of the Constitution on the due process and equal protection clauses.

**4. ID.; ID.; ID.; ID.; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; WORK-RELATED ILLNESS; DISCUSSED.—** Petitioner points out that his illness is work-related simply because had it been a land-based employment, petitioner would have easily gone home and attended to the needs of his family.

The Court cannot submit to this argument. This is not the "work-related" instance contemplated by the provisions of the employment contract in order to be entitled to the benefits. Otherwise, every seaman would automatically be entitled to compensation because the nature of his work is not land-based and the submission of the seaman to the company-designated physician as to the nature of the illness suffered by him would just be an exercise of futility. The fact is that the petitioner failed to establish, by substantial evidence, that his brief psychotic disorder was caused by the nature of his work as oiler of the company-owned vessel. In fact, he failed to elaborate on the nature of his job or to specify his functions as oiler of respondent company. The Court, therefore, has difficulty in finding any link between his position as oiler and his illness.

**5. ID.; ID.; ID.; ID.; ID.; IN ORDER TO CLAIM DISABILITY BENEFITS UNDER THE STANDARD EMPLOYMENT CONTRACT, IT IS THE COMPANY-DESIGNATED PHYSICIAN WHO MUST ASSESS THE SEAMAN'S DISABILITY.—** Although strict rules of evidence are not applicable in claims for compensation and disability benefits, the Court cannot just disregard the provisions of the POEA SEC. Significantly, a seaman is a contractual and not a regular employee. His employment is contractually fixed for a certain period of time. Petitioner and respondents entered into a contract of employment. It was approved by the POEA on October 25, 2005 and, thus, served as the law between the parties. Undisputedly, Section 20-B of the POEA Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (POEA-SEC) provides for compensation and benefits for injury or illness suffered by a seafarer. It says that, in order to claim disability benefits under the Standard Employment Contract, it is the 'company-designated' physician who must proclaim that the seaman suffered a permanent disability, whether total or partial, due to either injury or illness, during the term of the latter's employment.

**APPEARANCES OF COUNSEL**

*Linsangan Linsangan & Linsangan Law Offices* for petitioner.
*Del Rosario & Del Rosario* for respondents.

## D E C I S I O N

**MENDOZA, *J.*:**

*While it is true that labor contracts are impressed with public interest and the provisions of the POEA Standard Employment Contract must be construed logically and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels, absent substantial evidence from which reasonable basis for the grant of benefits prayed for can be drawn, We are left with no choice but to deny the claims of the employee, lest We cause injustice to the employer. We must always remember that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.*[1]

This is a petition for review under Rule 45 of the Rules of Court challenging the October 29, 2008 Decision[2] of the Court of Appeals *(CA)*, and its March 4, 2009 Resolution,[3] in CA-G.R. SP No. 104343, *reversing* the March 25, 2008 Decision[4] and April 30, 2008 Resolution[5] of the National Labor Relations Commission *(NLRC)* which affirmed the decision of the Labor Arbiter (LA) favoring the petitioner.

**THE FACTS:**

In November 2005, petitioner was hired by respondent Tara Trading Shipmanagement, Inc. *(Tara)*, in behalf of its foreign principal, respondent Shinline SDN BHD *(Shinline)* to work as an Oiler on board MV "Thailine 5"[6] with a monthly salary of US$409.00.

[1] *Klaveness Maritime Agency, Inc. v. Beneficiaries of the Late Second Officer Anthony S. Allas*, G.R. No. 168560, January 28, 2008, 542 SCRA 593, 603.

[2] *Rollo*, pp. 22-45. Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justice Mario L. Guarina III and Associate Justice Ricardo R. Rosario, concurring.

[3] *Id.* at 46-47.

[4] CA *rollo*, pp. 54-62.

[5] *Id.* at 51-52.

[6] *Rollo*, p. 23.

Sometime in April 2006, petitioner began exhibiting signs of mental instability. He was repatriated on May 24, 2006 for further medical evaluation and management.[7]

Petitioner was referred by respondents to the Metropolitan Medical Center where he was diagnosed to be suffering from "brief psychotic disorder."[8]

Despite his supposed total and permanent disability and despite repeated demands for payment of disability compensation, respondents allegedly failed and refused to comply with their contractual obligations.[9]

Hence, petitioner filed a Complaint against respondents praying for the payment of US$60,000.00 as total and permanent disability benefits, reimbursement of medical and hospital expenses, moral and exemplary damages, and attorney's fees equivalent to 10% of total claims.[10]

Respondents, on the other hand, maintained that petitioner requested for an early repatriation and arrived at the point of hire on May 24, 2006; that while on board the vessel, he confided to a co-worker, Henry Santos, that his eating and sleeping disorders were due to some family problems; that Capt. Zhao, the master of the vessel, even asked him if he wanted to see a doctor; that he initially declined; that on May 22, 2006, petitioner approached Capt. Zhao and requested for a vacation and early repatriation; that the said request was granted; that upon arrival, petitioner was subjected to a thorough psychiatric evaluation; and that after a series of check-ups, it was concluded that his illness did not appear to be work-related. Respondents argued that petitioner was not entitled to full and permanent disability benefits under the Philippine Overseas Employment Administration Standard Employment Contract *(POEA SEC)* because there was no declaration from the company-designated

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[7] *Id.*

[8] *Id.*

[9] *Id.* at 24.

[10] *Id.*

physician that he was permanently and totally disabled and that the claim for damages was without basis as no bad faith can be attributed to them.[11]

On September 17, 2007, the **LA** *ruled in favor of the petitioner*.[12] Specifically, the LA held that:

> The claim for total and permanent disability benefits is resolved in favor of complainant. Respondents have stated that the cause of complainant's illness, brief psychotic disorder, is largely unknown. This being the case, it is not therefore right to bluntly claim that the same is not work-related because it is also possible that the illness may be caused by or aggravated by his employment. As alleged by respondents, there are certain factors which may bring about brief psychotic disorder such as "*biological or psychological vulnerability toward the development of psychotic symptoms.*" Complainant, and all seamen for that matter, are subjected to stress because of the rigorous and strenuous demands of being at sea for prolonged periods of time, causing sensory deprivation and continuous isolation, to borrow the words of complainant's attending psychiatrist. As correctly argued by complainant, while all seamen may be subjected to the same or greater degree of stress, their respective abilities to cope with these factors are different. There is therefore the risk that seamen, not only complainant, are prone to contract brief psychotic disorder since they are most of the time at sea and away from their loved ones.
>
> As early as 27 June 2006, respondents' designated physicians have declared that complainant's condition does not appear to be work-related. With this declaration, respondents are bound to deny complainant's claim for disability benefits. He cannot therefore be faulted for filing the instant case in October 2006 without waiting for the evaluation of his disability impediment by the company designated doctors. Moreover, the 120 days period lapsed without the latter having declared the degree of complainant's disability, if any.
>
> Complainant is thus considered to be totally and permanently disabled as he is no longer capable of earning wages in the same kind of work, or work of similar nature that he was trained for or

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[11] *Id.* at 25.

[12] CA *rollo*, pp. 66-75.

accustomed to perform. He is now incapacitated to work, hence, his earning capacity is impaired. Jurisprudence has declared that disability should not be understood more on its medical significance but on loss of earning capacity.

With the foregoing, complainant is awarded total and permanent disability benefits in the amount of US$ 60,000.00 or its equivalent in Philippine Currency at the time of payment.

Complainant cannot however be awarded his claim for medical and hospitalization expenses. He did not anymore pursue this charge in his pleadings, hence, the same remained unsubstantiated. The same holds true with his claim for moral and exemplary damages. Complainant failed to prove bad faith or malice on respondents' part in denying his claims.

Complainant is entitled to attorney's fees as he sought the assistance of his counsel in pursuing his claims against respondents for his total and permanent disability benefits. He is thus awarded an equivalent of ten percent (10%) of his total claims as and by way of attorney's fees.

WHEREFORE, in view of the foregoing, respondents Tara Trading Shipmanagement, Inc. and/or Shinline SDN. BHD, are hereby ordered to pay complainant Edgardo M. Panganiban his total and permanent disability benefit in the amount of US$60,000.00 plus US$6,000.00 attorney's fees, in Philippine Currency, at the prevailing rate of exchange at the time of payment.

All other claims are denied.

SO ORDERED.[13]

Respondents appealed to the NLRC. On March 25, 2008, the **NLRC affirmed** the decision of the LA.[14] The appeal of respondents was dismissed for lack of merit.[15] The NLRC reasoned out that "All material averments on appeal are mere rehash or amplification of the substantive allegations propounded in the proceedings below which were already discerned and judiciously passed upon by the Labor Arbiter." [16]

[13] *Id.* at 72-75.

[14] *Id.* at 54-62.

[15] *Rollo,* pp. 27-28.

[16] CA *rollo*, pp. 59-60.

Respondents filed a motion for reconsideration but it was denied in a resolution dated April 30, 2008.

Aggrieved, respondents filed a Petition for Certiorari with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order[17] with the CA. In their petition, respondents presented the following grounds:

**A. Public respondent gravely abused its discretion and committed serious error in ruling that the petitioners are liable to private respondent for the payment of disability compensation in the amount of US$ 60,000.00 considering the facts as borne out by the evidence on record and the applicable laws.**

1. **Public respondent committed grave abuse of discretion in arriving at the findings of fact which are not substantiated by the evidence on record.**

2. **Public respondent committed grave abuse of discretion when it failed to consider the evidence which proves the illness is not work related, thereby violating petitioners' right to procedural due process.**

3. **Public respondent erred in not finding in favor of the expert opinion of the company-designated doctor on the nature of the illness as against that of complainant's doctor in utter disregard of rules on evidence.**

   **Without concrete proof that his assessment is biased and self-serving, the medical opinion of the company-designate physician should be accorded probative value and not discarded merely on the basis of unfounded allegation.**

4. **Public respondent committed grave abuse of discretion when it affirmed the award of attorney's fees.**

**B. Public respondent committed grave abuse of discretion when it affirmed the award of attorney's fees.**[18]

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[17] *Id*. at 2-307.

[18] *Id*. at 18.

On October 29, 2008, the **CA** *reversed* the decision of the NLRC.[19] Pertinently, the CA held that:

We find that the NLRC (Sixth Division) committed grave abuse of discretion in affirming the Decision of Labor Arbiter Cellan which awarded US$60,000.00 total and permanent disability benefits and US$6,000.00 attorney's fees in favor of private respondent, as the findings of both the Labor Arbiter and the NLRC (Sixth Division) are not anchored on substantial evidence.

It is basic that a contract is the law between the parties. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. Unless the stipulations in a contract are contrary to law, morals, good customs, public order or public policy, the same are binding as between the parties.

A seafarer is a contractual, not a regular employee, and his employment is contractually fixed for a certain period of time. His employment, including claims for death or illness compensations, is governed by the contract he signs every time he is hired, and is not rooted from the provisions of the Labor Code.

The Contract of Employment entered into by petitioners and private respondent, and approved by the POEA on 25 October 2005, provides:

> "The herein terms and conditions in accordance with Department Order No. 4 and Memorandum Circular No. 09, both Series of 2000, shall be strictly and faithfully observed.
> x x x Upon approval, the same shall be deemed an integral part of the: **Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels**."

Section 20-B of the POEA Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels ("POEA-SEC" for brevity) provides that "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: x x x"

Under the Definition of Terms found in the Standard Contract, a work related illness is defined as "any sickness resulting to disability

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[19] *Rollo*, pp. 22-45.

or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." In the instant case, the illness "brief psychotic disorder" is not listed as an occupational disease.

In the instant case, it is an undisputed fact that private respondent's illness occurred during the term of his contract. The remaining issue to be determined is whether or not private respondent's illness of "brief psychotic disorder" is work-related.

We find that private respondent's brief psychotic disorder was not contracted as a result of or caused by the seafarer's work as an Oiler on board the vessel M.V. Thailine 5.

A review of the evidence shows that the company-designated physician Dr. Mylene Cruz-Balbon ("Dr. Balbon," for brevity) issued a certification dated 26 June 2006 certifying that private respondent has undergone medical evaluation treatment at Robert D. Lim, M.D. Marine Medical Services, Metropolitan Medical Center from 26 May 2006 up to the date of the certification, due to "Brief Psychotic Disorder." x x x.

x x x x x x x x x

On the psychological test done on 30 May 2006 on private respondent, Dr. Raymond L. Rosales ("Dr. Rosales," for brevity) Diplomate in Neurology and Psychiatry and Associate Professor of the University of Santo Tomas Hospital, who is the specialist to whom private respondent was referred by the company-designated physician, commented that private respondent suffered from hallucinations, persecutory delusions and paranoia; at present, he does not exhibit these symptoms; no definite mood disturbance; no suicidal intent; fair judgment and insight; the working diagnosis is brief psychotic disorder; <u>at this point, his condition does not appear to be work-related since he claims to have no significant stressor at work and his symptoms were most likely triggered by personal family problems</u>; and he needs to be followed up for atleast 3 months with regular intake of medications.

As to the question of which findings should prevail, that of the company-designated physician or the private respondent's personal physician, Section 20-B of the POEA-SEC provides:

*'2. x x x x x x x x x*

*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 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.****'* (Emphasis supplied)

In order to claim disability benefits under the Standard Employment Contract, it is the "company-designated" physician who must proclaim that the seaman suffered a permanent disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. It is a cardinal rule in the interpretation of contracts that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control. There is no ambiguity in the wording of the Standard Employment Contract – the only qualification prescribed for the physician entrusted with the task of assessing the seaman's disability is that he be "company-designated."

x x x x x x x x x

[E]ven private respondent's co-employee Oiler Henry Santos stated in his letter to the Master of the vessel that private respondent could not eat and sleep because of a family problem. x x x.

x x x x x x x x x

From the foregoing disquisitions, private respondent is neither entitled to a total and permanent disability of US$60,000.00 nor to attorney's fees of US$6,000.00. Petitioners did not act with gross or evident bad faith in denying the claim of private respondent. Thus, We find that the NLRC (Sixth Division) acted with grave abuse of discretion in dismissing petitioner's appeal, affirming the Decision of Labor Arbiter Cellan, and denying petitioners' Motion for Reconsideration.

While it is true that labor contracts are impressed with public interest and the provisions of the POEA Standard Employment Contract must be construed fairly, reasonably and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels, we should always be mindful that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence. x x x.

x x x x x x x x x

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated 25 March 2008 and Resolution dated 30 April 2008 of the National Labor Relations Commission (Sixth Division) in *NLRC LAC NO. 11-000311-07; NLRC NCR OFW (M) CASE NO. 06-10-03278-00* are **REVERSED** and **SET ASIDE** and private respondent's complaint is hereby **DISMISSED**.

However, solely for humanitarian considerations, petitioners are hereby **ORDERED** to grant private respondent the amount of Php50,000.00 by way of financial assistance, and to continue, at their expense, the medical treatment of private respondent until the final evaluation or assessment could be made, with regard to private respondent's medical condition.

SO ORDERED.[20]

Petitioner's Motion for Reconsideration was denied by the CA in its Resolution dated March 4, 2009.[21]

[20] *Id.* at 33-43; See also CA *rollo*, pp. 131-132, 286.

[21] *Id.* at 46-47.

Hence, this Petition anchored on the following grounds—

**I**

**THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN IGNORING THE OVERWHELMING EVIDENCE THAT SUPPORTS PETITIONER'S ENTITLEMENT TO MAXIMUM DISABILITY BENEFITS IN THE AMOUNT OF USD60,000.00**

**II**

**THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING THE COMPLAINANT'S DISABILITY BENEFITS SOLELY BECAUSE THE COMPANY-DESIGNATED PHYSICIAN HAS DECLARED PETITIONER'S ILLNESS AS NOT WORK-RELATED**

**III**

**THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN NOT CONSIDERING THAT COMPLAINANT COULD NO LONGER RETURN TO ACTIVE SEA DUTIES, A JOB HE WAS TRAINED AND ACCUSTOMED TO PERFORM WITHOUT ENDANGERING HIS HEALTH AND LIFE**

**IV**

**THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING PETITIONER'S SEPARATE CLAIMS FOR DAMAGES AND ATTORNEY'S FEES.**[22]

The Court denies the petition.

Preliminarily, considering the grounds raised by petitioner, it appears that he denominated this petition as one under Rule 45, but he filed it as *both* a petition for review under Rule 45 *and* a petition for *certiorari* under Rule 65 of the Rules of Court. The applicable rule is Rule 45, which clearly provides

[22] *Id.* at 4-5.

that decisions, final orders or resolutions of the CA in any case, regardless of the nature of the action or proceeding involved, may be appealed to this Court through a petition for review. This remedy is a continuation of the appellate process over the original case. Recourse under Rule 65 cannot be allowed either as an add-on or as a substitute for appeal.[23]

The procedural infirmity notwithstanding, the Court shall treat this petition as one filed under Rule 45 *only* and shall consider the alleged grave abuse of discretion on the part of the CA as an allegation of reversible error.

The pivotal issue to be resolved is whether or not the CA is correct in denying petitioner's entitlement to full and total disability benefits amounting to US$60,000.00 and attorney's fees in the amount of US$6,000.00.

The Court resolves the issue in the affirmative.

It need not be overemphasized that in the absence of substantial evidence, working conditions cannot be accepted to have caused or at least increased the risk of contracting the disease, in this case, brief psychotic disorder. Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by law is real and not merely apparent.[24]

Even in case of death of a seafarer, the grant of benefits in favor of the heirs of the deceased is **not** automatic. As in the case of *Rivera v. Wallem Maritime Services, Inc.*,[25] without a post-medical examination or its equivalent to show that the disease for which the seaman died was contracted during his employment or that his working conditions increased the risk

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[23] *Pagoda Philippines, Inc. v. Universal Canning, Inc.*, G.R. No. 160966, October 11, 2005, 472 SCRA 355, 359.

[24] *Aya-ay v. Arpaphil Shipping Corp.*, G.R. No. 155359, January 31, 2006, 481 SCRA 282, 294-295.

[25] G.R. No. 160315, November 11, 2005, 474 SRA 714, 723.

of contracting the ailment, the employer/s cannot be made liable for death compensation.

In fact, in *Mabuhay Shipping Services, Inc. v. NLRC*,[26] the Court held that the death of a seaman even during the term of employment does not automatically give rise to compensation. Several factors must be taken into account such as the circumstances which led to the death, the provisions of the contract, and the right and obligation of the employer and the seaman with due regard to the provisions of the Constitution on the due process and equal protection clauses.

Petitioner points out that his illness is work-related simply because had it been a land-based employment, petitioner would have easily gone home and attended to the needs of his family.[27]

The Court cannot submit to this argument. This is not the "work-related" instance contemplated by the provisions of the employment contract in order to be entitled to the benefits. Otherwise, every seaman would automatically be entitled to compensation because the nature of his work is not land-based and the submission of the seaman to the company-designated physician as to the nature of the illness suffered by him would just be an exercise of futility.

The fact is that the petitioner failed to establish, by substantial evidence, that his brief psychotic disorder was caused by the nature of his work as oiler of the company-owned vessel. In fact, he failed to elaborate on the nature of his job or to specify his functions as oiler of respondent company. The Court, therefore, has difficulty in finding any link between his position as oiler and his illness.

The Court cannot give less importance either to the fact that petitioner was a seaman for 10 years serving 10 to 18-month contracts and never did he have any problems with his earlier contracts.[28] The Court can only surmise that the brief

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[26] G.R. No. 94167, January 21, 1991, 193 SCRA 141, 145.

[27] *Rollo*, p. 123.

[28] CA *rollo*, p. 133.

psychotic disorder suffered by him was brought about by a family problem. His daughter was sick and, as a seafarer, he could not just decide to go home and be with his family.[29] Even the psychiatric report[30] prepared by the evaluating private psychiatrist of petitioner shows that the hospitalization of petitioner's youngest daughter caused him poor sleep and appetite. Later, he started hearing voices and developed fearfulness.

Although strict rules of evidence are not applicable in claims for compensation and disability benefits, the Court cannot just disregard the provisions of the POEA SEC. Significantly, a seaman is a contractual and not a regular employee. His employment is contractually fixed for a certain period of time. Petitioner and respondents entered into a contract of employment. It was approved by the POEA on October 25, 2005 and, thus, served as the law between the parties. Undisputedly, Section 20-B of the POEA Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (POEA-SEC) provides for compensation and benefits for injury or illness suffered by a seafarer. It says that, in order to claim disability benefits under the Standard Employment Contract, it is the 'company-designated' physician who must proclaim that the seaman suffered a permanent disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. In *German Marine Agencies, Inc. v. NLRC*,[31] the Court's discussion on the seafarer's claim for disability benefits is enlightening. Thus:

> [In] order to claim disability benefits under the Standard Employment Contract, it is the "company-designated" physician who must proclaim that the seaman suffered a permanent disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. There is no provision requiring accreditation by the POEA of such physician. In fact, aside from their own gratuitous

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[29] *Rollo*, p. 123; See also CA *rollo*, p. 108.

[30] CA *rollo*, pp. 133-134.

[31] G.R. No. 142049, 403 Phil. 572, 588-589 (2001).

allegations, petitioners are unable to cite a single provision in the said contract in support of their assertions or to offer any credible evidence to substantiate their claim. If accreditation of the company-designated physician was contemplated by the POEA, it would have expressly provided for such a qualification, by specifically using the term "accreditation" in the Standard Employment Contract, to denote its intention. For instance, under the Labor Code, it is expressly provided that physicians and hospitals providing medical care to an injured or sick employee covered by the Social Security System or the Government Service Insurance System must be accredited by the Employees Compensation Commission. It is a cardinal rule in the interpretation of contracts that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control. **There is no ambiguity in the wording of the Standard Employment Contract – the only qualification prescribed for the physician entrusted with the task of assessing the seaman's disability is that he be 'company-designated.' When the language of the contract is explicit, as in the case at bar, leaving no doubt as to the intention of the drafters thereof, the courts may not read into it any other intention that would contradict its plain import**. [Emphasis supplied]

In this case, the findings of respondents' designated physician that petitioner has been suffering from brief psychotic disorder and that it is not work-related must be respected.

The Court commiserates with the petitioner, but absent substantial evidence from which reasonable basis for the grant of benefits prayed for can be drawn, the Court is left with no choice but to deny his petition, lest an injustice be caused to the employer. Otherwise stated, while it is true that labor contracts are impressed with public interest and the provisions of the POEA SEC must be construed logically and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels, still the rule is that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[32]

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[32] *Supra* note 1.

Lastly, it appears premature at this time to consider petitioner's disability as permanent and total because the severity of his ailment has not been established with finality to render him already incapable of performing the work of a seafarer. In fact, the medical expert termed his condition as ***brief*** *psychotic disorder*. The Court also takes note, as the CA correctly did, that petitioner did not finish his treatment with the company-designated physician, hence, there is no final evaluation *yet* on petitioner.

All told, no reversible error was committed by the CA in rendering the assailed Decision and issuing the questioned Resolution.

**WHEREFORE,** the October 29, 2008 Decision of the Court of Appeals and its March 4, 2009 Resolution in CA-G.R. SP No. 104343, are *AFFIRMED*.

**SO ORDERED.**

*Carpio (Chairperson), Nachura, Leonardo-de Castro,*[*] and *Peralta, JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 187116. October 18, 2010]

**ASSET BUILDERS CORPORATION,** *petitioner, vs.* **STRONGHOLD INSURANCE COMPANY, INCORPORATED,** *respondent.*

**SYLLABUS**

**1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SURETYSHIP; SURETY'S LIABILITY, EXPOUNDED.—** Respondent, along

[*] Designated as an additional member in lieu of Justice Roberto A. Abad, per Special Order No. 905 dated October 5, 2010.

with its principal, Lucky Star, bound itself to the petitioner when it executed in its favor surety and performance bonds. The contents of the said contracts clearly establish that the parties entered into a surety agreement as defined under *Article 2047 of the New Civil Code*. Thus: Art. 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so. If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. **In such case the contract is called a suretyship**. As provided in Article 2047, the surety undertakes to be bound solidarily with the principal obligor. That undertaking makes a surety agreement an ancillary contract as it presupposes the existence of a principal contract. Although the contract of a surety is in essence secondary only to a valid principal obligation, the surety becomes liable for the debt or duty of another although it possesses no direct or personal interest over the obligations nor does it receive any benefit therefrom. Let it be stressed that notwithstanding the fact that the surety contract is secondary to the principal obligation, the surety assumes liability as a regular party to the undertaking. *Stronghold Insurance Company, Inc. v. Republic-Asahi Glass Corporation*, reiterating the ruling in *Garcia v. Court of Appeals*, expounds on the nature of the surety's liability: x x x. The surety's obligation is not an original and direct one for the performance of his own act, but merely accessory or collateral to the obligation contracted by the principal. **Nevertheless,** although the contract of a surety is in essence secondary only to a valid principal obligation, **his liability to the creditor or promisee of the principal is said to be direct, primary and absolute; in other words, he is directly and equally bound with the principal.**

**2. ID.; ID.; ID.; TWO TYPES OF RELATIONSHIP; SURETY CAN BE DIRECTLY HELD LIABLE BY THE OBLIGEE FOR PAYMENT AS A SOLIDARY OBLIGOR UPON THE OBLIGOR'S DEFAULT; CASE AT BAR.—** Suretyship, in essence, contains two types of relationship – the principal relationship between the obligee *(petitioner)* and the obligor *(Lucky Star)*, and the accessory surety relationship between the principal *(Lucky Star)* and the surety *(respondent)*. In this arrangement, the obligee accepts the surety's solidary undertaking to pay if the obligor does not pay. Such

acceptance, however, does not change in any material way the obligee's relationship with the principal obligor. Neither does it make the surety an active party to the principal obligee-obligor relationship. Thus, the acceptance does not give the surety the right to intervene in the principal contract. The surety's role arises only upon the obligor's default, at which time, it can be directly held liable by the obligee for payment as a solidary obligor. In the case at bench, when Lucky Star failed to finish the drilling work within the agreed time frame despite petitioner's demand for completion, it was already in delay. Due to this default, Lucky Star's liability attached and, as a necessary consequence, respondent's liability under the surety agreement arose. Undeniably, when Lucky Star reneged on its undertaking with the petitioner and further failed to return the ₱575,000.00 downpayment that was already advanced to it, respondent, as surety, became solidarily bound with Lucky Star for the repayment of the said amount to petitioner. The clause, "this bond is callable on demand," strongly speaks of respondent's primary and direct responsibility to the petitioner. Accordingly, after liability has attached to the principal, the obligee or, in this case, the petitioner, can exercise the right to proceed against Lucky Star or respondent or both.

**3. ID.; ID.; ID.; ID.; ID.; THE OBLIGOR'S RESORT TO RESCISSION OF THE PRINCIPAL CONTRACT FOR FAILURE OF THE OBLIGOR TO PERFORM ITS UNDERTAKING DOES NOT AUTOMATICALLY RELEASE THE SURETY FROM ANY LIABILITY.—** Contrary to the trial court's ruling, respondent insurance company was not automatically released from any liability when petitioner resorted to the rescission of the principal contract for failure of the other party perform its undertaking. Precisely, the liability of the surety arising from the surety contracts comes to life upon the solidary obligor's default. It should be emphasized that petitioner had to choose rescission in order to prevent further loss that may arise from the delay of the progress of the project. Without a doubt, Lucky Star's unsatisfactory progress in the drilling work and its failure to complete it in due time amount to non-performance of its obligation. In fine, respondent should be answerable to petitioner on account of Lucky Star's non-performance of its obligation as guaranteed by the performance bond.

**4. ID.; ID.; JOINT AND SOLIDARY OBLIGATIONS; PAYMENT BY A SOLIDARY DEBTOR ENTITLES HIM TO REIMBURSEMENT FROM THE OTHER CO-DEBTOR; CASE AT BAR.—** Article *1217* of the New Civil Code acknowledges the right of reimbursement from a co-debtor *(the principal co-debtor, in case of suretyship)* in favor of the one who paid *(the surety).* Thus, respondent is entitled to reimbursement from Lucky Star for the amount it may be required to pay petitioner arising from its bonds.

**APPEARANCES OF COUNSEL**

*Salomon Gonong Law Offices* for petitioner.
*Romeo C. Dela Cruz & Associates* for respondent.

**D E C I S I O N**

**MENDOZA, *J.*:**

This petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assails the February 27, 2009 Decision[1] of the Regional Trial Court, Pasig City, Branch 71 *(RTC)*, in Civil Case No. 71034, ordering defendant Lucky Star to pay petitioner Asset Builders Corporation the sum of ₱575,000.00 with damages, but absolving respondent Stronghold Insurance Company, Incorporated (*Stronghold)* of any liability on its Surety Bond and Performance Bond.

**THE FACTS**

On April 28, 2006, Asset Builders Corporation *(ABC)* entered into an agreement with Lucky Star Drilling & Construction Corporation *(Lucky Star)* as part of the completion of its project to construct the ACG Commercial Complex on "NHA Avenue corner Olalia Street, Barangay Dela Paz, Antipolo City."[2] As can be gleaned from the "Purchase Order,"[3] Lucky Star was to supply labor, materials, tools, and equipment including technical

[1] *Rollo*, pp. 8-12. Penned by RTC Judge Franco T. Falcon.

[2] Records, pp. 11-13.

[3] *Id.*

supervision to drill one (1) exploratory production well on the project site. The total contract price for the said project was ₱1,150,000.00. The salient terms and conditions of said agreement are as follows:

i. Lump sum price—PHP1,150,000.00;

ii. 50% downpayment—upon submission of surety bond in an equivalent amount and performance bond equivalent to 30 % of contract amount;

iii. Completion date—60 calendar days;

iv. Penalty—2/10 of 1% of total contract amount for every day of delay;

v. Terms—50% down payment to be released after submission of bonds;

vi. Retention—Subject to 10% retention to be released after the project is accepted by the owner;

To guarantee faithful compliance with their agreement, Lucky Star engaged respondent Stronghold which issued two (2) bonds in favor of petitioner. The first, SURETY BOND G(16) No. 141558, dated May 9, 2006, covers the sum of ₱575,000.00[4] or the required downpayment for the drilling work. The full text of the surety bond is herein quoted:

KNOW ALL MEN BY THESE PRESENTS:

That we, LUCKY STAR DRILLING & CONSTRUCTION CORP., 168 ACACIA St., Octagon Industrial Estate Subd., Pasig City as principal, and STRONGHOLD INSURANCE COMPANY, INC., a corporation duly organized and existing under and by virtue of laws of the Philippines, as surety, are held and firmly bound unto ASSET BUILDERS CORPORATION to the sum of Pesos FIVE HUNDRED SEVENTY FIVE THOUSAND ONLY (₱575,000.00) Philippine Currency, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE AS FOLLOWS:

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[4] *Id.* at 60-61.

To fully and faithfully guarantee the repayment to be done through deductions from periodic billings of the advance payment made or to be made by the Obligee to the Principal in connection with the supply of labor, materials, tools and equipment including technical supervision to drill one (1) exploratory production well located at NIA Ave. cor. Olalia St., Brgy. dela Paz, Antipolo City. This bond is callable on demand.

The liability of the surety company upon determination under this bond shall in no case exceed the penal sum of PESOS: FIVE HUNDRED SEVENTY FIVE THOUSAND (₱575,000.00) only, Philippine Currency.

WHEREAS, the Obligee requires said principal to give a good and sufficient bond in the above stated sum to secure the full and faithful performance on his part of said undertakings.

NOW, THEREFORE, if the above bounden principal shall in all respects duly and fully observe and perform all and singular the aforesaid [co]-venants, conditions and agreements to the true intent and meaning thereof, then this obligation shall be null and void, otherwise to remain in full force and effect.

Liability of surety on this bond will expire on May 09, 2007 and said bond will be cancelled five DAYS after its expiration, unless surety is notified of and existing obligations hereunder.

x x x[5]

With respect to the second contract, PERFORMANCE BOND G(13) No. 115388, dated May 09, 2006, it covers the sum of ₱345,000.00.[6] Thus:

KNOW ALL MEN BY THESE PRESENTS:

That we, LUCKY STAR DRILLING & CONSTRUCTION of 168 Acacia St., Octagon Ind'l., contractor, of Estate, Sub., Pasig City Philippines, as principal and the STRONGHOLD INSURANCE COMPANY, INC. a corporation duly organized and existing under and by virtue of the laws of the Philippines, with head office at Makati, as Surety, are held and firmly bound unto the ASSET BUILDERS CORPORATION and to any individual, firm, partnership, corporation

[5] *Id.* at 60. See also Records, p. 17.

[6] *Id.* at 62-63.

or association supplying the principal with labor or materials in the penal sum of THREE HUNDRED FORTY FIVE THOUSAND ONLY (₱345,000.00), Philippine Currency, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, exec

tors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The CONDITIONS OF THIS OBLIGATION are as follows;

WHEREAS the above bounden principal on the ___ day of _____, 19__ entered into a contract with the ASSET BUILDERS CORPORATION represented by _____, to fully and faithfully.

> Comply with the supply of labor, materials, tools and equipment including technical supervision to drill one (1) exploratory production well located at NIA Ave. cor. Olalia St., Brgy. Dela Paz, Antipolo City. This bond is callable on demand.

WHEREAS, the liability of the Surety Company under this bond shall in no case exceed the sum of PESOS THREE HUNDRED FORTY FIVE THOUSAND ONLY (₱345,000.00) Philippine Currency, inclusive of interest, attorney's fee, and other damages, and shall not be liable for any advances of the obligee to the principal.

WHEREAS, said contract requires the said principal to give a good and sufficient bond in the above-stated sum to secure the full and faithfull performance on its part of said contract, and the satisfaction of obligations for materials used and labor employed upon the work;

NOW THEREFORE, if the principal shall perform well and truly and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extension thereof that may be granted by the obligee, with notice to the surety and during the life of any guaranty required under the contract, and shall also perform well and truly and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereinafter be made, without notice to the surety except when such modifications increase the contract price; and such principal contractor or his or its sub-contractors shall promptly make payment to any individual, firm, partnership, corporation or association supplying the principal of its sub-contractors with labor and materials in the prosecution of the work provided for in the said contract, then, this obligation shall be null and void; otherwise it shall remain in

full force and effect. Any extension of the period of time which may be granted by the obligee to the contractor shall be considered as given, and any modifications of said contract shall be considered as authorized, with the express consent of the Surety.

The right of any individual, firm, partnership, corporation or association supplying the contractor with labor or materials for the prosecution of the work hereinbefore stated, to institute action on the penal bond, pursuant to the provision of Act No. 3688, is hereby acknowledge and confirmed. x x x

On May 20, 2006, ABC paid Lucky Star ₱575,000.00 (with 2% withholding tax) as advance payment, representing 50% of the contract price.[7] Lucky Star, thereafter, commenced the drilling work. By July 18, 2006, just a few days before the agreed completion date of 60 calendar days, Lucky Star managed to accomplish only ten (10) % of the drilling work. On the same date, petitioner sent a demand letter to Lucky Star for the immediate completion of the drilling work[8] with a threat to cancel the agreement and forfeit the bonds should it still fail to complete said project within the agreed period.

On August 3, 2006, ABC sent a Notice of Rescission of Contract with Demand for Damages to Lucky Star.[9] Pertinent portions of said notice read:

Pursuant to paragraph 1 of the Terms and Conditions of the service contract, notice is hereby made on you of the rescission of the contract and accordingly demand is hereby made on you, within seven (7) days from receipt hereof:

(1) to refund the down payment of PHP563,500.00, plus legal interest thereon;

(2) to pay liquidated damages equivalent to 2/10 of 1% of the contract price for every day of delay, or a total of PHP138,000.00;

(3) to pay the amount guaranteed by your performance bond in the amount of PHP345,000.00;

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[7] *Id.* at 64.

[8] *Id.* at 65.

[9] *Id.* at 66-67.

(4) to pay PHP150,000.00 in other consequential damages;

(5) to pay exemplary damages in the amount of PHP150,000.00;

(6) to vacate the project site, together with all your men and equipment.

Should you refuse to comply with our demand within the above period, we shall be constrained to sue you in court, in which event we shall demand payment of attorney's fees in the amount of at least PHP100,000.00.

On August 16, 2006, ABC sent a Notice of Claim for payment to Stronghold to make good its obligation under its bonds.[10]

Despite notice, ABC did not receive any reply either from Lucky Star or Stronghold, prompting it to file its Complaint for Rescission with Damages against both before the RTC[11] on November 21, 2006.

In its "Answer (with Complusory Counterclaim and Cross-Claim)," dated January 24, 2007, Stronghold denied any liability arguing that ABC had not shown any proof that it made an advance payment of 50% of the contract price of the project. It further averred that ABC's rescission of its contract with Lucky Star virtually revoked the claims against the two bonds and absolved them from further liability.[12]

Lucky Star, on the other hand, failed to file a responsive pleading within the prescribed period and, thus, was declared in default by the RTC in its Order dated August 24, 2007.[13]

On February 27, 2009, the RTC rendered the assailed decision ordering Lucky Star to pay ABC but absolving Stronghold from liability.[14] Relevant parts of the decision, including the decretal portion, read:

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

[11] *Id.* at 70-79.

[12] *Id.* at 92-101.

[13] *Id.* at 102.

[14] *Id.* at 45-49.

On the liability of defendant Stronghold Insurance, the Court rules on the negative.

The surety bond and performance bond executed by defendants Lucky Star and Stronghold Insurance are in the nature of accessory contracts which depend for its existence upon another contract. Thus, when the agreement (Exhibit 'A') between the plaintiff and defendant Asset Builders was rescinded, the surety and performance bond were automatically cancelled.

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff and against defendant Lucky Star Drilling & Construction, ordering the latter as follows:

1. to pay plaintiff in the amount of PHP575,000.00 as actual damages plus legal interest from the filing of the complaint;
2. to pay plaintiff in the amount of PHP100,000.00 as liquidated damages;
3. to pay plaintiff in the amount of PHP50,000.00 as exemplary damages;
4. to pay plaintiff in the amount of PHP 50,000.00 as attorney's fees;
5. to pay the costs of the suit.

Defendant Stronghold Insurance Company, Inc.'s compulsory counterclaim and cross-claim are dismissed.[15]

Hence, this petition.

Petitioner ABC prays for the reversal of the challenged decision based on the following

**GROUNDS**

**A. The Lower Court seriously *erred* and unjustly *ACTED ARBITRARILY* with manifest bias and grave abuse of discretion, *CONTRARY* to applicable laws and established jurisprudence in declaring the "*automatic CANCELLATION*" of respondent Stronghold's Surety Bond and Performance Bond, because:**

**(a) Despite rescission, there exists a continuing *VALID PRINCIPAL OBLIGATION* guaranteed by Respondent's**

[15] *Id.* at 12.

**Bonds, arising out of the Contractor's *DEFAULT* and *Non-performance*.**

**(b) Upon breach by its Principal/contractor, the *LIABILITIES* of Respondent's bonds had already *ACCRUED*, automatically attached, and had become already *DIRECT*, *PRIMARY* and *ABSOLUTE*, even before Petitioner's legitimate exercise of its *option* under Art. 1191 of the New Civil Code.**

**(c) Rescission does NOT *AFFECT* the liabilities of the Respondent Stronghold as its *LIABILITIES* on its subject bonds have already become *INTERWOVEN* and *INSEPARABLE* with the liabilities of its Principal, the Contractor Lucky Star.**

**B. With the Lower Court's completely erroneous ruling on the liabilities of Respondent's bonds, the Lower Court *equally ERRED* with manifest bias and grave abuse, in its *FAILURE* to comply with the "duty of court" to make a finding of "unreasonable denial or withholding" by Respondent Stronghold or Petitioner's claims and impose upon the Respondent the penalties provided for under Section 241 and 244 of the Insurance Code**.[16]

Essentially, the primary issue is whether or not respondent insurance company, as surety, can be held liable under its bonds.

The Court rules in the affirmative.

Respondent, along with its principal, Lucky Star, bound itself to the petitioner when it executed in its favor surety and performance bonds. The contents of the said contracts clearly establish that the parties entered into a surety agreement as defined under *Article 2047 of the New Civil Code*. Thus:

> Art. 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.
>
> If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. **In such case the contract is called a suretyship**. [Emphasis supplied]

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[16] *Id.* at 26-27.

As provided in Article 2047, the surety undertakes to be bound solidarily with the principal obligor. That undertaking makes a surety agreement an ancillary contract as it presupposes the existence of a principal contract. Although the contract of a surety is in essence secondary only to a valid principal obligation, the surety becomes liable for the debt or duty of another although it possesses no direct or personal interest over the obligations nor does it receive any benefit therefrom.[17] Let it be stressed that notwithstanding the fact that the surety contract is secondary to the principal obligation, the surety assumes liability as a regular party to the undertaking.[18]

*Stronghold Insurance Company, Inc. v. Republic-Asahi Glass Corporation*,[19] reiterating the ruling in *Garcia v. Court of Appeals*,[20] expounds on the nature of the surety's liability:

> X x x. The surety's obligation is not an original and direct one for the performance of his own act, but merely accessory or collateral to the obligation contracted by the principal. **Nevertheless,** although the contract of a surety is in essence secondary only to a valid principal obligation, **his liability to the creditor or promisee of the principal is said to be direct, primary and absolute; in other words, he is directly and equally bound with the principal.**

Suretyship, in essence, contains two types of relationship – the principal relationship between the obligee *(petitioner)* and the obligor *(Lucky Star)*, and the accessory surety relationship between the principal *(Lucky Star)* and the surety *(respondent)*. In this arrangement, the obligee accepts the surety's solidary undertaking to pay if the obligor does not pay. Such acceptance, however, does not change in any material way the obligee's relationship with the principal obligor. Neither does it make

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[17] *Security Pacific Assurance Corporation v. Hon. Tria-Infante*, 505 Phil. 609, 620 (2005).

[18] *Philippine Bank of Communications v. Lim*, 495 Phil. 645, 651 (2005).

[19] G.R. No. 147561, June 22, 2006, 492 SCRA 179, 190.

[20] G.R. No. 80201, November 20, 1990, 191 SCRA 493, 495-496.

the surety an active party to the principal obligee-obligor relationship. Thus, the acceptance does not give the surety the right to intervene in the principal contract. The surety's role arises only upon the obligor's default, at which time, it can be directly held liable by the obligee for payment as a solidary obligor.[21]

In the case at bench, when Lucky Star failed to finish the drilling work within the agreed time frame despite petitioner's demand for completion, it was already in delay. Due to this default, Lucky Star's liability attached and, as a necessary consequence, respondent's liability under the surety agreement arose.

Undeniably, when Lucky Star reneged on its undertaking with the petitioner and further failed to return the ₱575,000.00 downpayment that was already advanced to it, respondent, as surety, became solidarily bound with Lucky Star for the repayment of the said amount to petitioner. The clause, "this bond is callable on demand," strongly speaks of respondent's primary and direct responsibility to the petitioner.

Accordingly, after liability has attached to the principal, the obligee or, in this case, the petitioner, can exercise the right to proceed against Lucky Star or respondent or both. *Article 1216 of the New Civil Code* states:

> The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.

Contrary to the trial court's ruling, respondent insurance company was not automatically released from any liability when petitioner resorted to the rescission of the principal contract for failure of the other party to perform its undertaking. Precisely, the liability of the surety arising from the surety contracts comes

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[21] *Intra-Strata Assurance Corporation v. Republic*, G.R. No. 156571, July 9, 2008, 557 SCRA 363, 375-376.

to life upon the solidary obligor's default. It should be emphasized that petitioner had to choose rescission in order to prevent further loss that may arise from the delay of the progress of the project. Without a doubt, Lucky Star's unsatisfactory progress in the drilling work and its failure to complete it in due time amount to non-performance of its obligation.

In fine, respondent should be answerable to petitioner on account of Lucky Star's non-performance of its obligation as guaranteed by the performance bond.

Finally, Article *1217*[22] of the New Civil Code acknowledges the right of reimbursement from a co-debtor *(the principal co-debtor, in case of suretyship)* in favor of the one who paid *(the surety)*. Thus, respondent is entitled to reimbursement from Lucky Star for the amount it may be required to pay petitioner arising from its bonds.

**WHEREFORE,** the February 27, 2009 Decision of the Regional Trial Court, Pasig City, Branch 71, is *AFFIRMED* with *MODIFICATION*. Respondent Stronghold Insurance is hereby declared jointly and severally liable with Lucky Star for the payment of ₱575,000.00 and the payment of ₱345,000.00 on the basis of its performance bond.

**SO ORDERED.**

*Carpio (Chairperson), Nachura, Leonardo-de Castro,*[*] and *Peralta, JJ.*, concur.

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[22] Art. 1217 reads in part: Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made payment may claim from his co-debtors only on the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

[*] Designated as an additional member in lieu of Justice Roberto A. Abad, per Special Order No. 905 dated October 5, 2010.

**THIRD DIVISION**

[G.R. No. 189859. October 18, 2010]

**PIO MODESTO and CIRILA RIVERA-MODESTO,** *petitioners, vs.* **CARLOS URBINA, substituted by the heirs of OLYMPIA MIGUEL *VDA. DE* URBINA (Surviving Spouse) and children, namely: ESCOLASTICA M. URBINA, *ET AL.*,** *respondents.*

**SYLLABUS**

**1. CIVIL LAW; PROPERTY; POSSESSION; *ACCION PUBLICIANA*; ELUCIDATED.—** An *accion publiciana* is an ordinary civil proceeding to determine the better right of possession of realty independently of title. *Accion publiciana* is also used to refer to an ejectment suit where the cause of dispossession is not among the grounds for forcible entry and unlawful detainer, or when possession has been lost for more than one year and can no longer be maintained under Rule 70 of the Rules of Court. The objective of a plaintiff in *accion publiciana* is to recover possession only, not ownership.

**2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; GENERALLY, REVIEW OF FACTUAL ISSUE IS NOT PROPER; EXCEPTIONS.—** In asking us to determine which of the parties has a better right to possess the property, we are asked to resolve a factual issue, involving as it does the weighing and evaluation of the evidence presented by the parties in the courts below. Generally, such an exercise is not appropriate in a petition for review on *certiorari* under Rule 45 of the Rules of Court, which seeks to resolve only questions of law. Moreover, the factual findings of the CA, when supported by substantial evidence, areconclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) **When the judgment is based on a misapprehension of facts**; (5) When the findings of fact are conflicting; (6) When the

Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. Since the CA affirmed the factual findings of the RTC, we would normally be precluded from re-examining the factual circumstances of this case. However, it appears that the RTC and the CA, in concluding that Urbina has the right to lawfully eject the Modestos from the lot in question, have greatly misapprehended the facts of this case. In finding for Urbina, both the RTC and the CA mainly relied on the principle of estoppel, and focused on the Modestos' admission that they entered into a negotiated contract of sale with Urbina. In the process, they injudiciously ignored the other material issues that the Modestos raised regarding the validity of Urbina's possession of the property, specifically the Modestos' allegation that at the time Urbina began staking his claim over the property, it was still government land. This error on the part of the lower courts is made more evident when we take into account an intervening event which significantly affects the resolution of this case – the issuance by the LMB of its order dated February 19, 2010, which expressly stated that Urbina did not acquire any possessory rights over the lot. For these reasons, we find the review of the evidence on record proper.

**3. ID.; ID.; JURISDICTION; AUTHORITY OF THE COURTS TO RESOLVE AND SETTLE QUESTIONS RELATING TO THE POSSESSION OF PROPERTY, UPHELD IN CASE AT BAR.—** The authority of the courts to resolve and settle questions relating to the possession of property has long been settled. This authority continues, even when the land in question is public land. As we explained in *Solis v. Intermediate Appellate Court*: We hold that **the power and authority given to the Director of Lands to alienate and dispose of public lands does not divest the regular courts of their jurisdiction over**

**possessory actions instituted by occupants or applicants against others to protect their respective possessions and occupations.** While the jurisdiction of the Bureau of Lands [now the Land Management Bureau] is confined to the determination of the respective rights of rival claimants to public lands or to cases which involve disposition of public lands, the power to determine who has the actual, physical possession or occupation or the better right of possession over public lands remains with the courts. The rationale is evident. The Bureau of Lands does not have the wherewithal to police public lands. Neither does it have the means to prevent disorders or breaches of peace among the occupants. Its power is clearly limited to disposition and alienation and while it may decide disputes over possession, this is but in aid of making the proper awards. **The ultimate power to resolve conflicts of possession is recognized to be within the legal competence of the civil courts and its purpose is to extend protection to the actual possessors and occupants with a view to quell social unrest.** Consequently, while we leave it to the LMB to determine the issue of who among the parties should be awarded the title to the subject property, there is no question that we have sufficient authority to resolve which of the parties is entitled to rightful possession.

**4. ID.; ID.; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES ARE GENERALLY RESPECTED AND EVEN ACCORDED FINALITY BECAUSE OF THE SPECIAL KNOWLEDGE AND EXPERTISE GAINED BY THESE AGENCIES FROM HANDLING MATTERS FALLING UNDER THEIR SPECIALIZED JURISDICTION.—** Factual findings of administrative agencies are generally respected and even accorded finality because of the special knowledge and expertise gained by these agencies from handling matters falling under their specialized jurisdiction. Given that the LMB is the administrative agency tasked with assisting the Secretary of the Department of Environment and Natural Resources (*DENR*) in the management and disposition of alienable and disposable lands of the public domain, we defer to its specialized knowledge on these matters.

**5. CIVIL LAW; LAND TITLES AND DEEDS; PUBLIC LAND ACT; ONLY A PUBLIC LAND RECLASSIFIED AS ALIENABLE OR ACTUALLY ALIENATED BY THE STATE TO A PRIVATE PERSON CAN CONFER OWNERSHIP OR POSSESSORY**

**RIGHTS; APPLICATION IN CASE AT BAR.—** Unless a public land is shown to have been reclassified as alienable or actually alienated by the State to a private person, that piece of land remains part of the public domain, and its occupation in the concept of owner, no matter how long, cannot confer ownership or possessory rights. **It is only after the property has been declared alienable and disposable that private persons can legally claim possessory rights over it.** Accordingly, even if we recognize that Urbina had been in possession of the property as early as July 21, 1966, when he filed his Miscellaneous Sales Application, his occupation was unlawful and could not be the basis of possessory rights, in keeping with Section 88 of the Public Land Act, that states: **Section 88.** The tract or tracts of land reserved under the provisions of section eighty-three shall be non-alienable and shall not be subject to occupation, entry, sale, lease, or other disposition until again declared alienable under the provisions of this Act or by proclamation of the President. The same holds true for Urbina's tax declarations. Absent any proof that the property in question had already been declared alienable at the time that Urbina declared it for tax purposes, his tax declarations over the subject property cannot be used to support his claim of possession. Similarly, while the Modestos claim to have been in possession of Lot 356 for almost 33 years, this occupation could not give rise to possessory rights while the property being occupied remain government land that had not yet been declared alienable and disposable.

**6. ID.; ID.; ID.; ID.; MERE DECLARATION OF LAND FOR TAXATION PURPOSES DOES NOT CONSTITUTE POSSESSION THEREOF NOR IT IS PROOF OF OWNERSHIP IN THE ABSENCE OF THE CLAIMANT'S ACTUAL POSSESSION.—** As for the Certification from the City Treasurer of Taguig that the respondents presented, which certified that Carlos Urbina had paid real estate taxes on real property "describe[d] in the name of Carlos Urbina, with property located at Lower Bicutan, Taguig City" from 2009 and prior years, we note that the certification contains no description of the property subject of the tax declaration, leaving us to wonder on the identity of the property covered by the declaration. In any case, even if we consider this certification as sufficient proof that Urbina declared the subject property for tax declaration purposes, it must be stressed that the **mere**

**declaration of land for taxation purposes does not constitute possession thereof nor is it proof of ownership in the absence of the claimant's actual possession**. And in light of our categorical finding that the Modestos actually occupied the property in question from the time that it was declared alienable and disposable until the present time, the tax declaration fails to convince us that Urbina has a right to legally possess it. For these reasons, we find that Urbina utterly failed to prove that he has a better right to possess the property. Thus, we cannot sustain his complaint for ejectment against the Modestos and, perforce, must dismiss the same for lack of merit.

**7. ID.; OBLIGATIONS AND CONTRACTS; ESTOPPEL; DOES NOT ARISE WHERE THE REPRESENTATION OR CONDUCT OF THE PARTY SOUGHT TO BE ESTOPPED IS DUE TO IGNORANCE FOUNDED UPON AN INNOCENT MISTAKE; PRINCIPLE OF ESTOPPEL FINDS NO APPLICATION IN CASE AT BAR.—** [W]e find the CA's reliance on the principle of estoppel against the Modestos to be misplaced. Through estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying on it. This doctrine is based on the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied on it. It bears noting, however, that **no estoppel arises where the representation or conduct of the party sought to be estopped is due to ignorance founded upon an innocent mistake**. Here, the Modestos do not deny that they negotiated with Urbina for the sale of the subject property. However, because they entered the negotiated sales contract with Urbina on the mistaken belief, based on Urbina's erroneous assertion, that he was the lawful owner-possessor of the property in question, we do not consider them bound by this action. Consequently, the principle of estoppel finds no application in this case.

**APPEARANCES OF COUNSEL**

*A.D. Covera & Associates* for petitioners.
*Victor D. Aguinaldo* for respondents.

## R E S O L U T I O N

**BRION,[*] *J.*:**

We resolve the motion for reconsideration filed by petitioners Pio Modesto and Cirila Rivera Modesto (*Modestos* or *petitioners*) dated March 1, 2010,[1] seeking to reverse our January 11, 2010 Resolution, which denied their petition for review on *certiorari* for lack of merit.[2]

## FACTUAL ANTECEDENTS

***Civil Case No. 53483***

This case stems from a complaint for recovery of possession filed by respondent Carlos Urbina (*Urbina*) against the petitioners with the Regional Trial Court of Pasig (*RTC*), docketed as Civil Case No. 53483.

In his complaint, Urbina alleged that he is the owner of a parcel of land situated at Lower Bicutan, Taguig, designated as Lot 56, PLS 272. According to Urbina, the Modestos, through stealth, scheme, and machination, were able to occupy a portion of this property, designated as Lot 356, PLS 272. Thereafter, the Modestos negotiated with Urbina for the sale of this lot. However, before the parties could finalize the sale, the Modestos allegedly cancelled the transaction and began claiming ownership over the lot. Urbina made several demands on the Modestos to vacate the property, the last of which was through a demand letter sent on July 22, 1983. When the Modestos still refused to vacate, Urbina filed the present action against them.

In their answer, the Modestos claimed that Urbina could not be the lawful owner of the property because it was still government property, being a part of the Fort Bonifacio Military Reservation.

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[*] Designated Acting Chairperson of the Third Division, per Special Order No. 906 dated October 13, 2010.

[1] *Rollo*, pp. 97-118.

[2] *Id.* at 95.

After the resolution of various procedural issues,[3] the RTC of Pasig City rendered a decision in favor of Urbina on April 24, 2000, ordering the petitioners to immediately vacate and surrender the lot to Urbina and to pay him ₱200.00 monthly as compensation for the use of the property from July 22, 1983 until they finally vacate.[4]

The RTC noted that the petitioners recognized Urbina's possessory rights over the property when they entered into a negotiated contract of sale with him for the property. Thus, the Modestos were estopped from subsequently assailing or disclaiming Urbina's possessory rights over this lot.

The petitioners appealed this decision with the Court of Appeals (*CA*).

***LMB Conflict No. 110***

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[3] On February 17, 1989, the RTC issued a ruling based solely on the pleadings in favor of Urbina, and ordered the Modestos to vacate the lot. The RTC also ordered the Modestos to pay Urbina the amount of ₱200.00 a month as reasonable rental from the time of their occupation in July 1983 until they finally vacated the premises, and to pay ₱3,000.00 as attorney's fees.

On appeal, the CA set aside the RTC judgment on the pleadings, and ordered a remand of the case to the lower court for further proceedings or trial on the merits, as the case may be.

After conducting trial on the merits, the RTC rendered a decision dated March 4, 1996 which dismissed Urbina's complaint without prejudice on the ground that the proper government office in charge of the Fort Bonifacio Military Reservation, being an indispensable party, should be impleaded under Section 7, Rule 3 of the Rules of Court.

Urbina moved for reconsideration, which the RTC thereafter granted in its Order dated May 21, 1996. In the same order, it ordered Urbina to include Fort Bonifacio Military Reservation in its complaint. Urbina then filed an amended complaint, impleading the Bases Conversion Development Authority as party defendant. The RTC admitted the amended complaint. The parties,however, subsequently agreed to drop the Bases Conversion and Development Authority as party defendant since the assailed lot is no longer within the supervision of the BCDA but within the jurisdiction of the Bureau of Lands. *Id.* at 63-65.

[4] *Rollo*, pp. 62-69.

Urbina's claim of ownership over Lot 56 is based primarily on his Miscellaneous Sales Application No. (III-1) 460 (*Miscellaneous Sales Application*), which he filed on July 21, 1966.[5]

While Urbina's *accion publiciana* complaint was pending before the RTC, the Modestos filed a letter-protest against Urbina's Miscellaneous Sales Application with the Land Management Bureau (*LMB*) on January 29, 1993, claiming that: (a) they are the owners of Lot 356, PLS 272;[6] (b) they have been occupying this lot for almost 33 years; and (c) their house is constructed on this lot.

The Modestos also alleged that they filed an unnumbered sales application for Lot 356 with the LMB, based on their actual occupancy of the property, pursuant to Proclamations 2476 and 172, on February 10, 1993.

**On January 31, 2008, the LMB denied with finality the Modestos' unnumbered sales application/protest against Urbina's application, in turn upholding Urbina's Miscellaneous Sales Application**.

Refusing to give up, the Modestos filed a motion for reconsideration. They also filed an Insular Government Patent Sales Application over Lot 356 on January 27, 2009.[7]

## THE COURT OF APPEALS DECISION

The CA affirmed *in toto* the RTC decision in Civil Case No. 53483 on January 26, 2009.[8] The CA agreed with the RTC's observation that the Modestos were estopped from challenging Urbina's right to possess the property after they acknowledged this right when they entered into the negotiated contract of sale. The CA also gave credence to the January

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[5] *Id.* at 65.

[6] The portion of Lot 56 that the Modestos were occupying.

[7] *Rollo,* p. 122.

[8] Penned by Associate Justice Arturo G. Tayag, with the concurrence of Presiding Justice Conrado M. Vasquez, Jr., and Associate Justice Hakim S. Abdulwahid. *Id.* at 45-60.

31, 2008 LMB order in LMB Conflict No. 110, ruling that this LMB order bolstered Urbina's possessory rights over the subject property.

At the time the CA decision was issued, respondent Carlos Urbina had already passed away and had been substituted by his surviving heirs, his spouse, Olympia Miguel *Vda*. de Urbina, and his children, Escolastica, Cecilia, Efren, Manolito, and Purificacion, all surnamed Urbina (*respondents*).

## THE PETITION

The petitioners subsequently filed a petition for review on *certiorari* with this Court, asserting that the CA committed reversible error in finding that Urbina had possessory rights over the property. **The Modestos mainly argued that at the time Urbina filed his MSA and acquired tax declarations over the subject property, the property was still government property, being part of a military reservation.** The property was thus not alienable and disposable, and could not legally be possessed by a private individual. Accordingly, Urbina could not use the MSA and the tax declarations as proof of a better right to possess the property as against the Modestos.

The Modestos further claimed that the CA committed grievous error when it held that they were estopped from challenging Urbina's right to possess the subject property. While they admitted to negotiating with Urbina for the sale of the property, they alleged that they did so based on Urbina's misrepresentation that he had a legal claim of ownership over the property. **Since their offer to buy the property from Urbina was based on his false assertions, the principle of estoppel cannot apply.**

Additionally, the Modestos alleged that since the property is covered by Proclamation No. 172 and Memorandum Order No. 119, the lower courts should have given due consideration to the primary and exclusive jurisdiction of the Director of Lands (of the Bureau of Lands, now Director of the Land Management Bureau) over these parcels of public lands.

Lastly, the Modestos questioned Urbina's qualifications to possess the property, claiming that Urbina was not in actual,

adverse, public and continuous possession of the property. According to the Modestos, from the time that Urbina filed his Miscellaneous Sales Application in 1966 until the present, Urbina was a resident of Makati City, and did not actually occupy the property.

In our Order dated January 11, 2010, we denied the Modestos' petition for failing to sufficiently show any reversible error in the assailed CA decision.

**THE MOTION FOR RECONSIDERATION**

On March 3, 2010, the Modestos filed their motion for reconsideration, raising essentially the same grounds already brought up in their petition for review on *certiorari*.

Notably, the Modestos attached LMB Order dated February 19, 2010 (*February 19, 2010 LMB Order*), which resolved their motion for reconsideration of the LMB's January 31, 2008 order in LMB Conflict No. 110. This Order held that the subject property had indeed been a part of the Fort Bonifacio Military Reservation, and only became alienable and disposable after October 16, 1987. Thus, Urbina's Miscellaneous Sales Application over the property was improper and could not be the source of possessory rights over the property.

The order also noted that Urbina failed to comply with the requirements of an applicant for ownership of the property, as set forth in Memorandum No. 119, the implementing guidelines of Proclamation No. 172.

Responding to this motion, the respondents, in their Comment dated May 31, 2010, reiterated that the petitioners are estopped from assailing Urbina's possessory rights over the property after they entered into a negotiated sales contract with him over the subject property. They also accused the Modestos of employing dilatory tactics in filing the present motion.

**THE RULING**

**We GRANT the motion for reconsideration.**

***Procedural issue***

An *accion publiciana* is an ordinary civil proceeding to determine the better right of possession of realty independently of title.[9] *Accion publiciana* is also used to refer to an ejectment suit where the cause of dispossession is not among the grounds for forcible entry and unlawful detainer, or when possession has been lost for more than one year and can no longer be maintained under Rule 70 of the Rules of Court. The objective of a plaintiff in *accion publiciana* is to recover possession only, not ownership.[10]

In asking us to determine which of the parties has a better right to possess the property, we are asked to resolve a factual issue, involving as it does the weighing and evaluation of the evidence presented by the parties in the courts below. Generally, such an exercise is not appropriate in a petition for review on *certiorari* under Rule 45 of the Rules of Court, which seeks to resolve only questions of law. Moreover, the factual findings of the CA, when supported by substantial evidence, are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion;

(4) **When the judgment is based on a misapprehension of facts**;

(5) When the findings of fact are conflicting;

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[9] *Bejar v. Caluag*, G.R. No. 171277, February 17, 2007, 516 SCRA 84, 90; *Sps. Cruz v. Torres*, 374 Phil. 529, 533 (1999); *Bishop of Cebu v. Mangaron*, 6 Phil. 286, 291 (1906); *Ledesma v. Marcos*, 9 Phil. 618, 620 (1908).

[10] *Spouses Padilla v. Velasco*, G.R. No. 169956, January 19, 2009, 576 SCRA 219.

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the trial court;

(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[11]

Since the CA affirmed the factual findings of the RTC, we would normally be precluded from re-examining the factual circumstances of this case. However, it appears that the RTC and the CA, in concluding that Urbina has the right to lawfully eject the Modestos from the lot in question, have greatly misapprehended the facts of this case.

In finding for Urbina, both the RTC and the CA mainly relied on the principle of estoppel, and focused on the Modestos' admission that they entered into a negotiated contract of sale with Urbina. In the process, they injudiciously ignored the other material issues that the Modestos raised regarding the validity of Urbina's possession of the property, specifically the Modestos' allegation that at the time Urbina began staking his claim over the property, it was still government land.

This error on the part of the lower courts is made more evident when we take into account an intervening event which significantly affects the resolution of this case – the issuance by the LMB of its order dated February 19, 2010, which expressly stated that Urbina did not acquire any possessory rights over

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[11] *Ontimare, Jr. v. Elep*, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265.

the lot. For these reasons, we find the review of the evidence on record proper.

***Jurisdiction of the Court***

The authority of the courts to resolve and settle questions relating to the possession of property has long been settled.[12] This authority continues, even when the land in question is public land. As we explained in *Solis v. Intermediate Appellate Court*:[13]

> We hold that **the power and authority given to the Director of Lands to alienate and dispose of public lands does not divest the regular courts of their jurisdiction over possessory actions instituted by occupants or applicants against others to protect their respective possessions and occupations.** While the jurisdiction of the Bureau of Lands [now the Land Management Bureau] is confined to the determination of the respective rights of rival claimants to public lands or to cases which involve disposition of public lands, the power to determine who has the actual, physical possession or occupation or the better right of possession over public lands remains with the courts.
>
> The rationale is evident. The Bureau of Lands does not have the wherewithal to police public lands. Neither does it have the means to prevent disorders or breaches of peace among the occupants. Its power is clearly limited to disposition and alienation and while it may decide disputes over possession, this is but in aid of making the proper awards. **The ultimate power to resolve conflicts of possession is recognized to be within the legal competence of the civil courts and its purpose is to extend protection to the actual possessors and occupants with a view to quell social unrest.**

Consequently, while we leave it to the LMB to determine the issue of who among the parties should be awarded the title to the subject property, there is no question that we have sufficient

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[12] See *Omandam v. Court of Appeals*, G.R. No. 128750, January 18, 2001, 349 SCRA 483; *Heirs of Sabanpan v. Comorposa*, G.R. No. 152807, August 12, 2003, 408 SCRA 692; *City of Baguio v. Nino*, G.R. No. 161811, April 12, 2006, 487 SCRA 216; *Estrella v. Robles, Jr.*, G.R. No. 171029, November 22, 2007, 538 SCRA 60.

[13] G.R. No. 72486, June 19, 1991, 198 SCRA 267.

authority to resolve which of the parties is entitled to rightful possession.

***On the issue of possessory rights***

Prefatorily, we observe that the subject property has not yet been titled, nor has it been the subject of a validly issued patent by the LMB. Therefore, the land remains part of the public domain, and neither Urbina nor the Modestos can legally claim ownership over it. This does not mean, however, that neither of the parties have the right to possess the property.

Urbina alleged that he is the rightful possessor of the property since he has a pending Miscellaneous Sales Application, as well as tax declarations over the property. He also relied, to support his claim of a better right to possess the property, on the admission on the part of the Modestos that they negotiated with him for the sale of the lot in question.

On the other hand, the Modestos anchored their right to possess the same on their **actual possession** of the property. They also questioned the legality of Urbina's Miscellaneous Sales Application, and his tax declarations over the property, arguing that since these were obtained when the land was still not alienable and disposable, they could not be the source of any legal rights.

After reviewing the records of this case, we find the reasoning of the Modestos to be more in accord with applicable laws and jurisprudence.

***The February 19, 2010 LMB Order***

Factual findings of administrative agencies are generally respected and even accorded finality because of the special knowledge and expertise gained by these agencies from handling matters falling under their specialized jurisdiction.[14] Given that the LMB is the administrative agency tasked with assisting the Secretary of the Department of Environment and Natural Resources (*DENR*) in the management and disposition of

[14] *Lim v. Commission on Audit*, G.R. No. 130325, March 11, 2003, citing *Mapa v. Arroyo*, 175 SCRA 76, 81 (1989).

alienable and disposable lands of the public domain,[15] we defer to its specialized knowledge on these matters. In this regard, we quote with approval the observations made by the Director of the LMB in the February 19, 2010 LMB Order:

Movants [the Modestos] have anchored their Motion for Reconsideration on three (3) assigned errors, to wit:

I. THIS OFFICE ERRED IN ITS FINDINGS THAT THE AREA IS NOT COVERED BY PROCLAMATION NO. 172, AS IMPLEMENTED BY MEMORANDUM ORDER NO. 119;

II. THIS OFFICE ERRED IN ITS FINDINGS THAT CARLOS T. URBINA WAS IN ACTUAL, ADVERSE, PUBLIC AND CONTINUOUS POSSESSION OF THE PROPERTY IN QUESTION;

III. THIS OFFICE ERRED IN NOT HOLDING THAT A NEW SURVEY OF THE AREA IN QUESTION SHOULD BE DONE AND CONDUCTED TO DETERMINE THE TRUE

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[15] Section 14, Executive Order No. 192, provides:

There is hereby created the **Lands Management Bureau** which shall absorb functions and powers of the Bureau of Lands except those line functions and powers which are transferred to the regional field office. The Lands Management Bureau to be headed by a Director and assisted by an Assistant Director shall advise the Secretary on matters pertaining to rational land classification management and disposition and shall have the following functions, but not limited to:

a. Recommend policies and programs for the efficient and effective administration, surveys, management and disposition of alienable and disposable lands of the public domain and other lands outside the responsibilities of other government agencies; such as reclaimed areas and other areas not needed for or are not being utilized for the purposes for which they have been established;

b. Advise the Regional Offices on the efficient and effective implementation of policies, programs and projects for more effective public lands management;

c. **Assist in the monitoring and evaluation of land surveys, management and disposition of lands** to ensure efficiency and effectiveness thereof;

d. Issue standards, guidelines, regulations and orders to enforce policies for the maximization of land use and development;

BOUNDARIES OF THE PROPERTY IN QUESTION *VIS-À-VIS* THE CLAIMS OF EACH PARTY.

In order to clarify the issues raised in the Motion for Reconsideration, this Office ordered that another ocular inspection and investigation on the subject premises be conducted by Special Investigator Danilo Lim. After said investigation, Special Investigator, Danilo Lim, submitted his Report to the Regional Technical Director, Lands Management Services, thru the Chief, Land Management Division, DENR-NCR.

In his Report, Special Investigator, Danilo Lim made the following findings:

> **The Miscellaneous Sales Application filed by Carlos Urbina is not appropriate because Lot 356 had ceased to be public land as it had become part of the Fort Bonifacio Military Reservation, and hence, no one can claim possessory rights over the said property since it is within said Military Reservation**. The subject area which is located in Lower Bicutan, Taguig, only became alienable and disposable upon the issuance of Presidential Proclamation No. 172 and its implementing guidelines Memorandum Order No. 119 on October 16, 1987.

After a judicious evaluation of the arguments raised in the instant motion, and taking into account the findings and recommendations of Special Investigator Danilo Lim as contained in his Report, this Office finds the same to be not entirely without merit.

Anent the first assigned error, Special Investigator Danilo Lim has found that **the area is indeed a part of the Fort Bonifacio Military Reservation and is covered by Proclamation No. 172** and Memorandum Order No. 119. Upon a thorough research of the origin of the subject property, it turned out that the area was originally

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e. Develop operating standards and procedure to enhance the Bureau's objectives and functions;

f. **Assist the Secretary as Executive Officer charged with carrying out the provisions of the Public Land Act** [C.A. 141, as amended], who shall have direct executive control of the survey, classification, lease, sale, or any other forms of concessions or disposition and management of the lands of the public domain; and

g. Perform other functions as may be assigned by the Secretary and/or provided by law.

part of the vast parcel of land known as Hacienda De Maricaban. Sometime in 1902, the United States of America purchased said vast tract of land with an area of Seven Hundred and Twenty Nine and Fifteenth Hundred (729.15) Hectares and spanning the Municipalities of Pasig, Taguig, Paranaque and Pasay, from its original owner, Dona Dolores Pacual Casal *Y* Ochoa, for the purpose of **establishing a US Military Reservation** which they later named Fort William Mc Kinley. On July 12, 1957, President Carlos P. Garcia issued **Proclamation No. 423**, reserving for military purposes, the parcels of land identified as Parcel No. 2, No. 3 and No. 4, Psu-2031, on which parcels of land excluding Parcel No. 2, the present Fort Bonifacio was established for the Republic of the Philippines. Parcel No. 3, Psu-2031 is covered by T.C.T. No. 61524 registered in the name of the Republic of the Philippines. On October 16, 1987, President Corazon C. Aquino issued Proclamation No. 172 in order to exclude from the operation of Proclamation No. 423 which established Fort Bonifacio, certain portions of land embraced therein known as Barangays Lower Bicutan, Upper Bicutan, Western Bicutan and Signal Village, all situated in the Municipality of Taguig, and to declare the same open for disposition to actual occupants and qualified applicants under the provisions of Republic Act No. 274 and Republic Act No. 730 in relation to the Public Land Act as amended; and under Memorandum Order No. 119 issued by President Corazon Aquino. In Proclamation No. 172, Lower Bicutan is described as Lot 3 situated in the Municipality of Taguig, M.M., and containing an area of One Million Eighty Four Thousand Three Hundred Eleven (1,084,311) sqm more or less or 108.43 hectares.

In view of all the above recitals, it appears that **the parcel of land subject of this case (Lot 356)** which is located in Barangay Lower Bicutan, City of Taguig **is covered by Proclamation No. 172** issued by President Corazon C. Aquino, and hence, the same **only became alienable and disposable to qualified applicants after October 16, 1987**, the date of its issuance, contrary to what is believed in the assailed Order of this Office.

With respect to the second assigned error, the issue can be resolved by the application of the legal provisions covering the subject property, which is Proclamation No. 172 and its implementing guidelines. Under its implementing guidelines, Memorandum No. 119, the following are the qualifications for an applicant to be qualified to apply for and acquire a lot under Proclamation No. 172, among others, to wit:

(1) He/She **must be a *bona fide* resident** of the proclaimed areas. To be considered a *bona fide* resident, the applicant must have the following qualifications:

a) A Filipino citizen of legal age and/or a head of the family;

b) **Must have constructed a house** in the area proclaimed for disposition on or before January 6, 1986 and **actually residing therein**;

c) **Must not own any other residential or commercial lot in Metro Manila;**

d) Must not have been a registered awardee of any lot under the administration of the NHA, MHS, or any other government agency, nor the AFP Officer's village;

e) Must not be a professional squatter. A professional squatter, for purposes of this Order, is one who engages in selling lots in the areas proclaimed for disposition; and

f) Has filed the proper application to purchase.

Based on the Report of Special Investigator Lim and the other Land Inspectors who investigated this case, namely: Jose P. Antonio and Jose P. Parayno, it was found that **Pio Modesto and his family are the actual occupants of the area with a residential house and chapel made of light materials** and Pio Modesto and his family are actually residing in the said residential house. On the other hand, it was established that **Carlos Urbina has been a resident of Pasay Road or 4929 Pio Del Pilar, Makati City.** Applying the qualifications provided for in Memorandum Order No. 119, we find that Spouses Modesto are to be qualified to apply for the subject lot as they have been in occupation thereof and have constructed their residential house thereon. Hence, they satisfy the requirements in order to be considered a "Bonafide Resident" as defined in the guidelines. As per our records, **Spouses Pio and Cirila Modesto have also filed an unnumbered I.G.P.S.A. Application for the subject lot on January 27, 2009. Carlos Urbina, however, never constructed any house on the subject lot and neither did he actually reside therein. Besides, he already owns a residential lot in Makati City where he had been residing all this time.** Hence, he cannot be considered a bonafide resident of the subject lot. He likewise failed to file his I.G.P.S.A application for the lot. Instead, what he had filed on January 20, 1966 was a Miscellaneous Sales Application. At that

time, however, the area of Barangay Lower Bicutan, where the subject lot is located, was still part of the Fort Bonifacio Military Reservation, and the same had not yet been segregated and declared to be alienable and disposable. **Hence, no possessory rights could have been acquired by his over the subject lot.**[16]

From this LMB order, we consider the following facts established:

*First*, the lot in question, situated in Barangay Lower Bicutan, was part of the Fort Bonifacio Military Reservation, and only became alienable and disposable after October 16, 1987, pursuant to Proclamation No. 172. This factual finding finds further support in the testimony, before the RTC, of Jose Exequiel Vale, Special Investigator and Assisting Hearing Officer of the DENR.[17]

*Second*, the Modestos are *bona fide* residents of the lot in question, being the actual residents of the lot and having built a house and chapel on the property.

*Third*, the Modestos have a pending Insular Government Patent Sales Application over the lot in question, filed *after* the property became alienable and disposable.

Taking these facts into account, we now make a distinction, based on the corresponding legal effects, between: (a) possession of the property before October 16, 1987, when the land was still considered inalienable government land, and (b) possession of the property after October 16, 1987, when the land had already been declared alienable and disposable.

***Possession prior to October 16, 1987***

Unless a public land is shown to have been reclassified as alienable or actually alienated by the State to a private person, that piece of land remains part of the public domain,[18] and its

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[16] *Rollo*, pp. 120-122.

[17] *Id.* at 64.

[18] *Seville v. National Development Company*, G.R. No. 129401, February 2, 2001, 351 SCRA 112.

occupation in the concept of owner, no matter how long, cannot confer ownership or possessory rights.[19] **It is only after the property has been declared alienable and disposable that private persons can legally claim possessory rights over it.**

Accordingly, even if we recognize that Urbina had been in possession of the property as early as July 21, 1966, when he filed his Miscellaneous Sales Application, his occupation was unlawful and could not be the basis of possessory rights, in keeping with Section 88 of the Public Land Act, that states:

> **Section 88.** The tract or tracts of land reserved under the provisions of section eighty-three shall be non-alienable and shall not be subject to occupation, entry, sale, lease, or other disposition until again declared alienable under the provisions of this Act or by proclamation of the President.

The same holds true for Urbina's tax declarations. Absent any proof that the property in question had already been declared alienable at the time that Urbina declared it for tax purposes, his tax declarations over the subject property cannot be used to support his claim of possession.

Similarly, while the Modestos claim to have been in possession of Lot 356 for almost 33 years,[20] this occupation could not give rise to possessory rights while the property being occupied remain government land that had not yet been declared alienable and disposable.

***Possession after October 16, 1987***

The different land investigators[21] sent by the LMB to survey the subject property have consistently held that the Modestos

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[19] *Spouses de Ocampo v. Arlos,* G.R. No.135527, October 19, 2000, 343 SCRA 716.

[20] Counted from January 29, 1993, when the Modestos filed their protest to Urbina's miscellaneous sales application in LMB Conflict No. 110.

[21] Special Investigator Danilo Lim, Land Inspectors Jose P. Antonio and Jose P. Parayno.

are the actual occupants of the lot in question. This actual occupation is not denied by Urbina. As a matter of fact, we know from Urbina's final demand letter that the Modestos have been in open and continuous possession of the property since July 22, 1983.[22] We also consider established that the Modestos built a house on the subject property, a fact that Urbina affirmed in his testimony before the RTC.[23] From these circumstances, we consider as settled the fact that **the Modestos were the actual possessors of the property when it was declared alienable and disposable on October 16, 1987, and continued to possess the property until the present time.**

Furthermore, the Modestos have a valid Insular Government Patent Sales Application over the property pending with the LMB, which they filed on January 27, 2009.[24] In contrast, Urbina has a Miscellaneous Sales Application filed in 1966, which the LMB considered invalid since it was filed when the property still formed part of a military reservation.

As for the Certification from the City Treasurer of Taguig that the respondents presented,[25] which certified that Carlos Urbina had paid real estate taxes on real property "describe[d] in the name of Carlos Urbina, with property located at Lower Bicutan, Taguig City" from 2009 and prior years, we note that the certification contains no description of the property subject of the tax declaration, leaving us to wonder on the identity of the property covered by the declaration.

In any case, even if we consider this certification as sufficient proof that Urbina declared the subject property for tax declaration purposes, it must be stressed that the **mere declaration of land for taxation purposes does not constitute possession thereof nor is it proof of ownership in the absence of the**

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[22] *Rollo*, p. 62.

[23] *Id.* at 63.

[24] *Id.* at 122.

[25] Attached to respondent Urbina's Comment dated May 31, 2010; *id.* at 140.

**claimant's actual possession**.[26] And in light of our categorical finding that the Modestos actually occupied the property in question from the time that it was declared alienable and disposable until the present time, the tax declaration fails to convince us that Urbina has a right to legally possess it.

For these reasons, we find that Urbina utterly failed to prove that he has a better right to possess the property. Thus, we cannot sustain his complaint for ejectment against the Modestos and, perforce, must dismiss the same for lack of merit.

***On the finding of estoppel***

Lastly, we find the CA's reliance on the principle of estoppel against the Modestos to be misplaced.

Through estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying on it.[27] This doctrine is based on the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied on it.[28] It bears noting, however, that **no estoppel arises where the representation or conduct of the party sought to be estopped is due to ignorance founded upon an innocent mistake**.[29]

Here, the Modestos do not deny that they negotiated with Urbina for the sale of the subject property. However, because they entered the negotiated sales contract with Urbina on the mistaken belief, based on Urbina's erroneous assertion, that

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[26] See *de Luna vs. Court of Appeals*, G.R. No. 94490, August 6, 1992**,** 212 SCRA 276.

[27] CIVIL CODE, Article 1431.

[28] *Rockland Construction Company v. Mid-Pasig Land Development Corporation*, G.R. No. 164587, February 04, 2008, citing *Philippine National Bank v. Court of Appeals*, Nos. L-30831 & L-31176, November 21, 1979, 94 SCRA 357, 368.

[29] *Ramiro v. Grano*, 54 Phil. 744 (1930), citing 21 C.J., 1125, 1126.

he was the lawful owner-possessor of the property in question, we do not consider them bound by this action. Consequently, the principle of estoppel finds no application in this case.

**WHEREFORE,** premises considered, we *GRANT* the motion and *REINSTATE* the petition. Consequently, we *REVERSE* and *SET ASIDE* the Decision dated January 26, 2009 and Resolution dated October 5, 2009 of the Court of Appeals in CA-G.R. CV No. 68007. We *DISMISS* the complaint for Recovery of Possession filed by Carlos T. Urbina for lack of merit.

**SO ORDERED.**

*Nachura,*[**] *Villarama, Jr., Mendoza,* [***] and *Sereno, JJ.* concur.

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**FIRST DIVISION**

[G.R. No. 191394. October 18, 2010]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **MARIA POLITICO *y* TICALA and EWINIE POLITICO *y* PALMA,** *accused-appellants.*

**SYLLABUS**

**1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); IMPLEMENTING RULES AND REGULATIONS; NON-COMPLIANCE WITH THE REQUIREMENTS UNDER SECTION 21 (A) THEREOF IS**

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[**] Designated Additional Member of the Third Division, per Special Order No. 907 dated October 13, 2010.

[***] Designated Additional Member of the Third Division, per Special Order No. 911 dated October 15, 2010.

**EXCUSED UNDER JUSTIFIABLE GROUNDS, AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; APPLICATION IN CASE AT BAR.—** [O]n the matter of non-compliance with the requirements of Sec. 21(a) of RA 9165, as to the failure of PO2 Jimenez to mark the sachets immediately after seizure, this issue is easily disposed of in the light of the Implementing Rules and Regulations (IRR) of RA 9165. xxx The IRR excuses non-compliance with the requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved. The fact that PO2 Jimenez marked the items at the police station, instead of at the area where the buy-bust operation took place, does not diminish the evidentiary value of the seized items, nor does it damage the case for the prosecution. Generally, non-compliance with Sec. 21 of the IRR will not render an accused's arrest illegal or the items seized or confiscated from the accused inadmissible. The failure to mark the items at the scene of the buy-bust operation was sufficiently explained by PO2 Jimenez, in that he and his team were compelled to remove accused-appellants from the scene as there were other people ganging up on them who might have freed accused-appellants. The necessity of securing accused-appellants, as well as the evidence, was paramount. Accused-appellants failed to show that the integrity and evidentiary value of the seized sachets were not properly preserved. From the testimony of PO2 Jimenez, as well as the records, which include the affidavit of apprehension, request for laboratory examination of the seized items, and the chemistry report, the chain of custody was established. The plastic sachets were accounted for from the time of the arrest to the time they were presented in court as evidence.

**2. ID.; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; PRESENT IN CASE AT BAR.—** In a successful prosecution for offenses involving the illegal sale of dangerous drugs under Sec. 5, Art. II of RA 9165, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it. Such elements are present in this case. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug or the *corpus delicti* as evidence. x x x PO2

Jimenez testified as the poseur-buyer in a buy-bust operation, identifying the accused couple as the sellers of a sealed sachet that contained a white crystalline substance, with PhP 200 as consideration. He marked said sachet in the presence of the couple before the item, along with other sachets confiscated from them, before these were sent to the crime laboratory for chemical analysis. The chemical analysis revealed that the crystalline substance in the sachets was methylamphetamine hydrochloride or *shabu*. The sachets were identified in court by PO2 Jimenez as the same ones that were confiscated from the couple.

**3. ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; PRESENT IN CASE AT BAR.—** [I]n illegal possession of dangerous drugs, such as *shabu*, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. Again, these elements are also present in this case. PO2 Jimenez testified that after the accused couple sold him *shabu*, when they emptied their pockets, two plastic sachets containing a white crystalline substance were recovered. These too were marked and submitted to the crime laboratory for analysis, and were found to contain *shabu*. PO2 Jimenez also identified the marked sachets in court as those recovered from accused-appellants.

**4. REMEDIAL LAW; EVIDENCE; FRAME-UP AND DENIAL; UNSUPPORTED AND UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE IN CASE AT BAR.—** Against the positive testimony of PO2 Jimenez, the defense of accused-appellants that they were victims of a frame-up must fail. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward, and probable testimony on affirmative matters. Accused-appellants failed to present corroborating evidence to support their alibi. It must be remembered that accused-appellants' defenses of frame-up and denial require strong and convincing evidence to support them, for the incantation of such defense is nothing new to the Court. The inability of accused-appellants to predicate their defense on anything other than their words alone

ultimately condemns them to prison, especially in light of the prosecution's evidence and witnesses, which accused-appellants had been incapable of impeaching.

**5. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON ARE ENTITLED TO GREAT RESPECT.—** The trial court held that PO2 Jimenez's testimony was more credible than the couple's. The rule is that the findings of the trial court on the credibility of witnesses are entitled to great respect, because trial courts have the advantage of observing the demeanor of the witnesses as they testify.

**6. ID.; ID.; ID.; AN AFFIRMATIVE TESTIMONY COMING FROM CREDIBLE WITNESSES WITHOUT MOTIVES TO PERJURE IS FAR STRONGER THAN A NEGATIVE TESTIMONY.—** [A]ccused-appellants cannot point to any ill motive for PO2 Jimenez to testify falsely. An affirmative testimony coming from credible witnesses without motive to perjure is far stronger than a negative testimony.

**7. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; PENALTY IN CASE AT BAR.—** Sec. 5, Art. II of RA 9165 provides that the penalty of life imprisonment to death and a fine ranging from five hundred thousand pesos (PhP 500,000) to ten million pesos (PhP 10,000,000) shall be imposed for the illegal sale of a dangerous drug, and pursuant to RA 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and a fine may be imposed upon accused-appellants for their violation of said section of RA 9165.

**8. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; PENALTY IN CASE AT BAR.—** Under Sec. 11(3) of RA 9165, regarding illegal possession of a dangerous drug, the penalty imposed shall be imprisonment of twelve (12) years and (1) day to twenty (20) years, and a fine ranging from three hundred thousand pesos (PhP 300,000) to four hundred thousand pesos (PhP 400,000) if the quantity of the dangerous drug is less than 5 grams.

**APPEARANCES OF COUNSEL**

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

**D E C I S I O N**

**VELASCO, JR., *J.*:**

Before this Court on appeal is the Decision dated November 27, 2009 of the Court of Appeals[1] (CA) in CA-G.R. CR-H.C. No. 03284, which upheld the convictions of accused-appellants Maria Politico y Ticala and Ewinie Politico *y* Palma in consolidated Criminal Case Nos. 06244402-06244404, decided by the Regional Trial Court (RTC) of Manila, Branch 35 on February 8, 2008.

In Criminal Case No. 06244402, accused-appellants were charged with violation of Section 5, in relation to Sec. 26, Article II of Republic Act No. (RA) 9165, in an Information dated June 5, 2006, which reads as follows:

> That on or about June 3, 2006, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other not having been authorized by law to sell trade deliver, or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell one (1) heat sealed transparent plastic sachet containing ZERO point ZERO ZERO SEVEN (0.007) gram of white crystalline substance known as "*Shabu*" containing methylamphetamine hydrochloride, which is a dangerous drug.[2]

In Criminal Case No. 06244403, accused-appellant Maria was charged with violation of Sec. 11(3), Art. II, RA 9165, in an Information dated June 5, 2006, which reads as follows:

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[1] Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Bienvenido L. Reyes and Antonio L. Villamor.

[2] Records, p. 2.

That on or about June 3, 2006, in the City of Manila, Philippines, the said accused without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in possession and under his custody and control, two (2) heat sealed transparent plastic sachet[s] weighing:

ZERO POINT ZERO ONE ZERO (0.010) gram and
ZERO POINT ZERO ZERO NINE (0.009) GRAM

of white crystalline substance containing methylamphetamine hydrochloride, known as "*shabu*" a dangerous drug.[3]

In Criminal Case No. 06244404, accused-appellant Ewinie was also charged with violation of Sec. 11(3), Art. II, RA 9165, in an Information dated June 5, 2006, which reads as follows:

That on or about June 3, 2006, in the City of Manila, Philippines, the said accused without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in possession and under his custody and control, two (2) heat sealed transparent plastic sachets weighing:

ZERO POINT ZERO ONE ZERO (0.010) gram and
ZERO POINT ZERO ZERO SEVEN (0.007) gram

of white crystalline substance containing methylamphetamine hydrochloride, known as "*shabu*" a dangerous drug.[4]

The cases were called for arraignment on June 22, 2006, but both accused appeared without counsel and requested that they be given 30 days to secure the services of counsel. On July 25, 2006, they appeared in court again without counsel, and a counsel *de oficio* was appointed for the arraignment, to assist both the accused in all further stages of the proceedings. At the arraignment, the couple pleaded "NOT GUILTY" in Criminal Case No. 06244402, and individually pleaded "NOT GUILTY" IN Criminal Case Nos. 06244403-04.

The prosecution's version of events relied largely upon the testimony of Police Officer 2 (PO2) Job Jimenez, the poseur-buyer in the buy-bust operation.

[3] *Id.* at 3.

[4] *Id.* at 4.

On June 2, 2006, at 11:00 p.m., a confidential informant of the Anti-Illegal Drugs Unit of the Manila Police Station No. 5 at U.N. Avenue, Manila made a report that a certain "Day" was selling *shabu* in Tondo, Manila. Accordingly, a buy-bust operation was planned, with PO2 Job Jimenez acting as poseur-buyer. Jimenez marked two 100-peso bills at the end of their serial numbers with his initials, "JJ."

On June 3, 2006, between 12:00 and 12:30 a.m., the police proceeded to the 12th St. in Tondo. Jimenez and the informant waited until they were approached by accused-appellant Maria. The informant then introduced Jimenez as the interested buyer to Maria. Maria then asked Jimenez how much he wanted to buy, to which he replied PhP 200 worth. Maria then told Jimenez to give the money to her husband, Ewinie. After Jimenez gave Ewinie the marked money, Maria handed him a plastic sachet containing a white crystalline substance. Jimenez then combed his hair, which was the pre-arranged signal for the rest of the team. He then introduced himself as a police officer and arrested the couple with the aid of PO3 Leslie Bautista. Jimenez then recovered the marked money from Ewinie. He also recovered two plastic sachets with a white crystalline substance from Maria, and another two plastic sachets from Ewinie. The couple were apprised of their rights, and were brought to Police Station No. 5. Jimenez then marked the five sachets in front of the police investigator with the initials of the accused as MPT-A (for the sachet handed to Jimenez during the buy-bust operation), MPT-B1, MPT-B2, EPP-1, and EPP-2 (for those recovered from the couple after the deal), with "MPT" for "Maria Politico y Ticala" and "EPP" for "Ewinie Politico *y* Palma."

The five plastic sachets were submitted to the Philippine National Police Crime Laboratory for analysis. In Chemistry Report No. D-682-06 dated June 3, 2006, prepared by Police Inspector Elisa G. Reyes, the five sachets were tested positive for methylamphetamine hydrochloride.

In their defense, accused-appellants stated that on June 3, 2006, at 11:00 p.m., they were inside their house on 12th Street, Port Area, Manila, watching TV when people claiming to be

police officers entered their house and brought the couple to the police station for "verification" purposes. At the police station, they were arrested and jailed.

The RTC consolidated the cases considering their relation to each other, and tried them jointly.

After considering the evidence for both sides, the trial court rendered its Decision on February 8, 2008, finding accused-appellants guilty in Criminal Case Nos. 06244402-04, the dispositive portion of the decision reading as follows:

> WHEREFORE, the foregoing premises considered, judgment is hereby rendered as follows:
>
> 1. In Criminal Case No. 06-0244402, finding both accused Maria Politico *y* Ticala and Ewinie Politico y Palma GUILTY beyond reasonable doubt of the offense therein charged, they are each hereby sentenced to suffer the penalty of life imprisonment; to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos; and the cost of suit;
>
> 2. In Criminal Case No. 06-244403, accused Maria Politico *y* Ticala, and in Criminal Case No. 06-244404, accused Ewinie Politico *y* Palma, finding them likewise GUILTY beyond reasonable doubt of the offense charged, they are each hereby sentenced to suffer an indeterminate penalty ranging from Twelve (12) years and One (1) day, as minimum, to Fifteen (15) years of imprisonment, as maximum; to pay a fine of Three Hundred Thousand (₱300,000.00) Pesos; and cost of suit.
>
> Let commitment orders be respectively issued for the immediate transfer of their custody to the Bureau of Corrections, Muntinlupa City and Correctional Institute for Women, Mandaluyong City, pursuant to SC Circulars Nos. 4-92-A and 7-2000.
>
> The five [(]5) plastic sachets (Exhibits "C" to "G", inclusive), the contents of which were positive for methylamphetamine hydrochloride, a dangerous drug, are hereby confiscated and forfeited in favor of the Government. The Branch Clerk of Court is hereby directed to turn over the same to the PDEA for proper disposal thereof.[5]

[5] *Id.* at 69-70.

**The Case before the CA**

The case was appealed to the CA, with accused-appellants contending that: (1) the plastic sachets allegedly recovered from them were not marked immediately after seizure, as the marking occurred only at the police station; and (2) they had been framed and the evidence had been planted.

The CA disposed of the appeal by finding that the chain of custody of the seized drugs was unbroken, and that the integrity and evidentiary value of the confiscated items were preserved. It also found that the defense of accused-appellants that they had been framed failed when faced with the detailed testimony of the arresting officer.

The CA, thus, upheld the RTC, with the dispositive portion of the CA decision reading as follows:

> WHEREFORE, the Appeal is hereby DENIED. The Joint Decision of conviction dated 8 February 2008 of the Regional Trial Court of Manila, Branch 35, in Criminal Case Nos. 06244402-06244404 is AFFIRMED.[6]

Hence, we have this appeal.

**The Ruling of this Court**

The appeal is without merit.

*First*, on the matter of non-compliance with the requirements of Sec. 21(a) of RA 9165, as to the failure of PO2 Jimenez to mark the sachets immediately after seizure, this issue is easily disposed of in the light of the Implementing Rules and Regulations (IRR) of RA 9165.

Sec. 21(a) of the IRR of RA No. 9165 reads as follows:

> The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative

[6] *Rollo*, p. 12.

from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

The IRR excuses non-compliance with the requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved. The fact that PO2 Jimenez marked the items at the police station, instead of at the area where the buy-bust operation took place, does not diminish the evidentiary value of the seized items, nor does it damage the case for the prosecution. Generally, non-compliance with Sec. 21 of the IRR will not render an accused's arrest illegal or the items seized or confiscated from the accused inadmissible.[7] The failure to mark the items at the scene of the buy-bust operation was sufficiently explained by PO2 Jimenez, in that he and his team were compelled to remove accused-appellants from the scene as there were other people ganging up on them who might have freed accused-appellants.[8] The necessity of securing accused-appellants, as well as the evidence, was paramount.

Accused-appellants failed to show that the integrity and evidentiary value of the seized sachets were not properly preserved. From the testimony of PO2 Jimenez, as well as the records, which include the affidavit of apprehension,[9] request for laboratory examination of the seized items,[10] and the chemistry report,[11] the chain of custody was established. The

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[7] *People v. Capco*, G.R. No. 183088, September 17, 2009, 600 SCRA 204, 213.

[8] TSN, October 12, 2006, p. 23.

[9] Records, p. 6.

[10] *Id.* at 9.

[11] *Id.* at 10.

plastic sachets were accounted for from the time of the arrest to the time they were presented in court as evidence.

In a successful prosecution for offenses involving the illegal sale of dangerous drugs under Sec. 5, Art. II of RA 9165, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it.[12] Such elements are present in this case. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug or the *corpus delicti* as evidence.[13]

PO2 Jimenez related how the buy-bust operation transpired as follows:

Q What time did you arrive at the place?

A Around 12:00 to 12:30, sir.

Q What was that place where you proceeded, was it a house, a store or office or a warehouse?

A It was in front of a house, the 12 Street, a squatter's area, sir.

Q What did you observe when you arrived in front of the house that you mentioned?

A The suspect approached us, sir.

Q Immediately when you arrived?

A Yes, sir.

Q By the way, who were with you when you approached the house?

A The confidential informant, sir.

Q You and the confidential informant?

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[12] *People v. Alberto*, G.R. No. 179717, February 5, 2010, 611 SCRA 706, 713.

[13] *People v. Rivera*, G.R. No. 182347, October 17, 2008, 569 SCRA 879, 893.

A Yes, sir.

Q What were you wearing at the time?

A Short pants and white t-shirt, sir.

Q You said you had companions at the time, where were they at the time?

A They strategically positioned themselves in the area, sir.

Q What happened when the suspect approached you?

A Maria *alias* Day asked the confidential informant whether her companion is the buyer of *shabu* and the informant replied yes.

Q After the confidential informant indicated to the suspect that you were the buyer of *shabu* that she was referring to, what happened next?

A Day asked me how much I am going to buy and I replied ₱200.00, sir.

Q What happened after you said you wanted to buy *shabu* in the amount of ₱200.00?

A Day instructed to give the money to her husband Ewinie, sir.

Q So the companion of the suspect happened to be her husband?

A Yes, sir.

Q What did you do after you were instructed to give the money to her husband?

A I handed him the two pieces of ₱100.00 bills, sir.

Q What happened next?

A Then Day handed to me one plastic sachet, sir.

Q What happened next?

A I combed my hair and that was the pre-arranged signal, sir.

Q What happened after you combed your hair?

A I introduced myself as a police officer and effected their arrest with the assistance of PO3 Bautista, sir.

Q Whom did you arrest?

A The two. Day and her husband, sir.

Q What happened after you and Police Officer Bautista effected the arrest of the two suspects?

A I recovered the money from the right hand of Ewinie and emptied their pockets and thereafter we recovered two plastic sachets with white crystalline substances from the right front short pants of Maria *alias* Day and another two plastic sachets from Ewinie's right front pants' pocket, sir.

Q So how many in all did you recover?

A Four sir plus the one that I was able to buy from *alias* Day, that makes five plastic sachets.

Q What happened next after you were able to recover these plastic sachets with white crystalline substances, if any?

A I informed them of their constitutional rights and they were brought to Police Station No. 5, sir.

Q What happened at the police station?

A I put markings on the recovered items in front of the investigator, sir.

Q You were the one who made the markings?

A Yes, sir.

Q Alright, we are dealing with five plastic sachets here. First, the one that you mentioned that was given to you in exchange of the buy-bust money, what markings did you place on that plastic sachet?

A MPT-A, sir.

Q What does MPT-A stand for?

A Maria Politico *y* Ticala, sir.

Q How about the ones that you recovered from Day, what markings did you place on them?

A MPT-B1 and MPT-B2, sir.

Q How about the two other plastic sachets that you recovered from Ewinie, what markings did you place on them?

A EPP-1 and EPP-2, sir.

Q What do the markings EPP stand for?

A Ewinie Politico *y* Palma, sir.

Q So, on the basis of the markings can you recognize the markings if shown to you again?

A Yes, sir.[14]

PO2 Jimenez testified as the poseur-buyer in a buy-bust operation, identifying the accused couple as the sellers of a sealed sachet that contained a white crystalline substance, with PhP 200 as consideration. He marked said sachet in the presence of the couple before the item, along with other sachets confiscated from them, before these were sent to the crime laboratory for chemical analysis. The chemical analysis revealed that the crystalline substance in the sachets was methylamphetamine hydrochloride or *shabu*. The sachets were identified in court by PO2 Jimenez as the same ones that were confiscated from the couple.

Parenthetically, in illegal possession of dangerous drugs, such as *shabu*, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[15] Again, these elements are also present in this case. PO2 Jimenez testified that after the accused couple sold him *shabu*, when they emptied their pockets, two plastic sachets containing a white crystalline substance were recovered. These too were marked and submitted to the crime laboratory for analysis, and were found

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[14] TSN, October 12, 2006, pp. 6-10.

[15] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 267.

to contain *shabu*. PO2 Jimenez also identified the marked sachets in court as those recovered from accused-appellants.

Against the positive testimony of PO2 Jimenez, the defense of accused-appellants that they were victims of a frame-up must fail. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward, and probable testimony on affirmative matters.[16] Accused-appellants failed to present corroborating evidence to support their alibi. It must be remembered that accused-appellants' defenses of frame-up and denial require strong and convincing evidence to support them, for the incantation of such defense is nothing new to the Court.[17] The inability of accused-appellants to predicate their defense on anything other than their words alone ultimately condemns them to prison, especially in light of the prosecution's evidence and witnesses, which accused-appellants had been incapable of impeaching.[18] The trial court held that PO2 Jimenez's testimony was more credible than the couple's. The rule is that the findings of the trial court on the credibility of witnesses are entitled to great respect, because trial courts have the advantage of observing the demeanor of the witnesses as they testify.[19] Furthermore, accused-appellants cannot point to any ill motive for PO2 Jimenez to testify falsely. An affirmative testimony coming from credible witnesses without motive to perjure is far stronger than a negative testimony.[20]

The prosecution has sufficiently proved the elements of the illegal sale and the illegal possession of the dangerous drug

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[16] *People v. Alberto*, *supra* note 12, at 714.

[17] *People v. Dilao*, G.R. No. 170359, July 27, 2007, 528 SCRA 427, 440-441.

[18] *People v. Soriano*, G.R. No. 173795, April 3, 2007, 520 SCRA 458, 469.

[19] *People v. Lazaro, Jr.*, *supra* note 15, at 268.

[20] *People v. Dilao*, *supra* note 17, at 441.

*shabu*, and has shown that accused-appellants are guilty beyond reasonable doubt of the crimes charged.

Sec. 5, Art. II of RA 9165 provides that the penalty of life imprisonment to death and a fine ranging from five hundred thousand pesos (PhP 500,000) to ten million pesos (PhP 10,000,000) shall be imposed for the illegal sale of a dangerous drug, and pursuant to RA 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and a fine may be imposed upon accused-appellants for their violation of said section of RA 9165.

Under Sec. 11(3) of RA 9165, regarding illegal possession of a dangerous drug, the penalty imposed shall be imprisonment of twelve (12) years and (1) day to twenty (20) years, and a fine ranging from three hundred thousand pesos (PhP 300,000) to four hundred thousand pesos (PhP 400,000) if the quantity of the dangerous drug is less than 5 grams.

The penalties imposed upon accused-appellants fall squarely within the provisions of the law.

**WHEREFORE,** the Court *AFFIRMS* the Decision dated November 27, 2009 of the CA in CA-G.R. CR-H.C. No. 03284.

**SO ORDERED.**

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

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(Calibre Traders, Inc. *vs*. Bayer Phils., Inc., G.R. No. 161431, Oct. 13, 2010) p. 350

— The Supreme Court is not a trier of facts, except when the inference drawn by the Court of Appeals from the facts is manifestly mistaken. (Sps. Chung *vs*. Ulanday Construction, Inc., G.R. No. 156038, Oct. 11, 2010) p. 1

*Points of law, theories, issues and arguments* — If not brought before the trial court, they cannot be raised for the first time on appeal; exceptions. (Apo Fruits Corp. *vs*. Land Bank of the Phils., G.R. No. 164195, Oct. 12, 2010) p. 251

*Right to appeal* — A statutory right, not a natural right. (Zamboanga Forest Managers Corp. *vs*. New Pacific Timber and Supply Co., G.R. No. 173342, Oct. 13, 2010) p. 403

**ARREST**

*Warrant of arrest* — When may be issued by the Regional Trial Court; rule. (OCAD *vs*. Judge Lerma, A.M. No. RTJ-07-2076, Oct. 12, 2010) p. 216

**ATTORNEYS**

*Code of Professional Responsibility* — A lawyer owes candor, fairness and good faith to the court. (Richards *vs*. Asoy, A.C. No. 2655, Oct. 12, 2010) p. 113

— A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the Integrated Bar of the Philippines. *(Id.)*

— A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead or allow the court to be misled by any artifice. *(Id.)*

*Lawyer's Oath* — A sacred trust that lawyers must uphold and keep inviolable at all times. (Richards *vs*. Asoy, A.C. No. 2655, Oct. 12, 2010) p. 113

*Withdrawal of counsel with conformity of the client* — Completed once it is filed in court. (Real Bank, Inc. *vs*. Samsung Mabuhay Corp., G.R. No. 175862, Oct. 13, 2010) p. 446

**BURDEN OF PROOF**

*Burden of proof in a contract of sale* — The burden of proof to establish the status of a purchaser and registrant in good faith lies upon the one who asserts it. (Sps. Pudadera *vs*. Magallanes, G.R. No. 170073, Oct. 18, 2010) p. 655

**CERTIORARI**

*Grave abuse of discretion* — Defined as a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. (Global Business Holdings, Inc. *vs*. Surecomp Software, B.V., G.R. No. 173463 Oct. 13, 2010) p. 416

*Petition for* — Denial of a motion to dismiss cannot be questioned therein except when such denial is tainted with grave abuse of discretion. (Global Business Holdings, Inc. *vs*. Surecomp Software, B.V., G.R. No. 173463 Oct. 13, 2010) p. 416

**CIVIL SERVICE**

*Gross misconduct and dishonesty* — Both punishable by dismissal from the service. (OCAD *vs*. Santos, A.M. No. P-06-2287, Oct. 12, 2010) p. 198

**CLERKS OF COURT**

*Duties* — As custodians of court funds, they are constantly reminded to deposit immediately the funds which they receive in their official capacity to the authorized government depositaries for they are not supposed to keep such funds in their custody and violation thereof constitutes gross dishonesty, grave misconduct and even malversation of public funds, also gross neglect of duty. (OCAD *vs*. Santos, A.M. No. P-06-2287, Oct. 12, 2010) p. 198

**COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657)**

*Just compensation* — Absent delay in the payment thereof, the imposition of interest on the final compensation cannot be allowed. (Land Bank of the Phils. *vs*. Escandor, G.R. No. 171685, Oct. 11, 2010) p. 20

— Department of Agrarian Reform's formula in computing just compensation must be strictly observed. *(Id.)*

— Determination thereof is a judicial function vested in the Regional Trial Court acting as a Special Agrarian Court. *(Id.)*

— Guidelines, cited. *(Id.)*

— The authority of the Department of Agrarian Reform to determine just compensation is merely preliminary. *(Id.)*

**COMPREHENSIVE DANGEROUS DRUGS ACT (R.A. NO. 9165)**

*Chain of custody rule* — Integrity of seized articles must be established by the prosecution. (People *vs*. Politico, G.R. No. 191394, Oct. 18, 2010) p. 728

*Illegal possession of prohibited or regulated drugs* — Elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. (People *vs*. Politico, G.R. No. 191394, Oct. 18, 2010) p. 728

— Imposable penalty. *(Id.)*

*Illegal sale of dangerous drugs* — Elements to be established are: (1) proof that the transaction of sale took place; and (2) the presentation in court of the corpus delicti or the illicit drug as evidence. (People *vs.* Politico, G.R. No. 191394, Oct. 18, 2010) p. 728

— Imposable penalty. *(Id.)*

**CONSPIRACY**

*Existence of* — Established when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. (Atizado *vs*. People, G.R. No. 173822, Oct. 13, 2010) p. 427

**CONTEMPT**

*Contempt of court* — Defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity. (BPI *vs*. Labor Arbiter Calanza, G.R. No. 180699, Oct. 13, 2010) p. 507

— To be contemptuous, an act must be clearly contrary to or prohibited by the order of the court or tribunal. *(Id.)*

*Indirect contempt* — A proceeding therefor is criminal in nature and adherence to due process is more stringently required of the court. (OCAD *vs*. Judge Lerma, A.M. No. RTJ-07-2076, Oct. 12, 2010) p. 216

— Proceeding therefor may be initiated only in two ways: (1) *motu proprio* by the court; or (2) through a verified petition and upon compliance with the requirements for initiatory pleadings. *(Id.)*

*Power to punish for contempt* — Inherent in all courts and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and consequently, to the due administration of justice. (BPI *vs*. Labor Arbiter Calanza, G.R. No. 180699, Oct. 13, 2010) p. 507

— Should be used sparingly with caution, restraint, judiciousness, deliberation, and due regard to the provisions of the law and the constitutional rights of the individual. (OCAD *vs*. Judge Lerma, A.M. No. RTJ-07-2076, Oct. 12, 2010) p. 216

**CONTRACT FOR A PIECE OF WORK**

*Contract price* — Requites for recovery of additional costs due to changes in work, cited. (Sps. Chung *vs*. Ulanday Construction, Inc., G.R. No. 156038, Oct. 11, 2010) p. 1

*Terms and conditions* — Requirement for the project owner's prior written consent to any change in the work is deemed written in the contract between the parties; principle of estoppel in pais is inapplicable. (Sps. Chung *vs*. Ulanday Construction, Inc., G.R. No. 156038, Oct. 11, 2010) p. 1

**CONTRACTS**

*Contract of adhesion* — Defined as one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. (Saludo, Jr. *vs*. Security Bank Corp., G.R. No. 184041, Oct. 13, 2010) p. 569

*Obligatory force of* — Parties' agreement is the law between them and must be complied with in good faith. (Sps. Chung *vs*. Ulanday Construction, Inc., G.R. No. 156038, Oct. 11, 2010) p. 1

**CORPORATIONS**

*Corporate obligations* — To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) complainant must allege in the complaint that the

director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) complainant must clearly and convincingly prove such unlawful acts, negligence, or bad faith. (SHS Perforated Materials, Inc. *vs*. Diaz, G.R. No. 185814, Oct. 13, 2010) p. 580

*Corporate officers* — In the context of P.D. No. 902-A, corporate officers are only those who are given that character either by the Corporation Code or by the corporation's by-laws. (Matling Industrial and Commercial Corp. *vs*. Coros, G.R. No. 157802, Oct. 13, 2010) p. 324

*Foreign corporation doing business without license* — Has no personality to file suits in the Philippines; exception. (Global Business Holdings, Inc. *vs*. Surecomp Software, B.V., G.R. No. 173463, Oct. 13, 2010) p. 416

*Intra-corporate controversy* — In order to determine whether a dispute constitutes an intra-corporate controversy or not, the Court considers two elements, namely: (1) the status or relationship of the parties; and (2) the nature of the question that is the subject of their controversy. (Matling Industrial and Commercial Corp. *vs*. Coros, G.R. No. 157802, Oct. 13, 2010) p. 324

— Includes controversy over illegal dismissal of a corporate officer which is cognizable by the Securities and Exchange Commission. *(Id.)*

**COUNTERCLAIMS**

*Compulsory counterclaims* — Defined as any claim for money or other 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 plaintiff's complaint. (Calibre Traders, Inc. *vs*. Bayer Phils., Inc., G.R. No. 161431, Oct. 13, 2010) p. 350

— Does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction,

and will be barred if not set up in the answer to the complaint in the same case; any other claim is permissive. *(Id.)*

— The tests to determine whether a counterclaim is compulsory or not are: (1) Are the issues of fact or law raised by the claim and the counterclaim largely the same?; (2) Would res judicata bar a subsequent suit on defendant's claim, absent the compulsory counterclaim rule?; (3) Will substantially the same evidence support or refute plaintiff's claim as well as the defendant's counterclaim?; and (4) Is there any logical relation between the claim and the counterclaim, such that the conduct of separate trials of the respective claims of the parties would entail a substantial duplication of effort and time by the parties and the court? *(Id.)*

**COURT PERSONNEL**

*Administrative complaint against court personnel* — Withholding of a certain amount from retirement benefits subject to the outcome of administrative case is upheld. (*Re*: Cases Submitted for Decision Before Judge Damaso Herrera, RTC, Br. 24, Biñan, Laguna, A.M. No. RTJ-05-1924, Oct. 13, 2010) p. 311

**COURTS**

*Duties* — In the absence of a clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits and final disposition of cases before the court. (Real Bank, Inc. *vs*. Samsung Mabuhay Corp., G.R. No. 175862, Oct. 13, 2010) p. 446

*Jurisdiction* — Courts acquire jurisdiction over a case only upon payment of the prescribed docket fee. (Pacific Rehouse Corp. *vs*. EIB Securities, Inc., G.R. No. 184036, Oct. 13, 2010) p. 534

— Dependent on the allegations in the complaint or information. (OCAD *vs*. Judge Lerma, A.M. No. RTJ-07-2076, Oct. 12, 2010) p. 216

**DAMAGES**

*Actual damages* — Proper computation of average income/ profit must be based on actual income earned in the past years. (Calibre Traders, Inc. *vs*. Bayer Phils., Inc., G.R. No. 161431, Oct. 13, 2010) p. 350

*Attorney's fees* — 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; exception. (Sps. Pudadera *vs*. Magallanes, G.R. No. 170073, Oct. 18, 2010) p. 655

*Temperate damages* — May be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. (People *vs*. Sally, G.R. No. 191254, Oct. 13, 2010) p. 615

**DANGEROUS DRUGS ACT OF 1972 (R.A. No. 6425)**

*Buy-bust operation* — Failure of the buy-bust team to comply strictly with the procedure will not overturn the presumption of regularity in the performance of their official duty. (People *vs*. Gonzaga, G.R. No. 184952, Oct. 11, 2010) p. 65

— It must be duly established by evidence that the substance examined by the forensic chemist was the same taken from the accused. *(Id.)*

*Illegal sale of dangerous drugs* — Elements that must concur are: (1) the identity of the buyer and the seller, the object and consideration; and (2) the delivery of the thing sold and the payment therefor. (People *vs*. Gonzaga, G.R. No. 184952, Oct. 11, 2010) p. 65

— Imposable penalty. *(Id.)*

**DOCUMENTARY EVIDENCE**

*Authentication and proof of documents* —Foreign laws must not only be alleged, but must also be proven. (ATCI Overseas Corp. *vs*. Echin, G.R. No. 178551, Oct. 11, 2010) p. 43

— To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court. *(Id.)*

**DONATION**

*Donation mortis causa* — Non-compliance with the formalities prescribed by law for the validity of wills renders the donation void and produces no effect. (Echavez *vs*. Dozen Construction and Dev't. Corp., G.R. No. 192916, Oct. 11, 2010) p. 108

**EMINENT DOMAIN**

*Concept* — As an inherent power, it does not need at all to be embodied in the Constitution; if it is mentioned at all, it is solely for purposes of limiting what is otherwise an unlimited power. (Apo Fruits Corp. *vs*. Land Bank of the Phils., G.R. No. 164195, Oct. 12, 2010) p. 251

— The two essential limitations to the power of eminent domain are: (1) the purpose of taking must be for public use and (2) just compensation must be given to the owner of the private property. *(Id.)*

*Just compensation* — Defined as the full and fair equivalent of the property taken from its owner by the expropriator. (Apo Fruits Corp. *vs*. Land Bank of the Phils., G.R. No. 164195, Oct. 12, 2010) p. 251

— The measure is not the taker's gain but the owner's loss since what is involved is the takeover of private property under the state's coercive power. *(Id.)*

— To be "just," it must also be made without delay. *(Id.)*

(Apo Fruits Corp. *vs*. Land Bank of the Phils., G.R. No. 164195, Oct. 12, 2010; *Bersamin, J., dissenting opinion*) p. 251

*Regular expropriation case vis-a-vis agrarian reform expropriation* — If there is to be a difference, the treatment of agrarian reform expropriations should be stricter and on a higher plane because of the government's societal

concerns and objectives. (Apo Fruits Corp. *vs*. Land Bank of the Phils., G.R. No. 164195, Oct. 12, 2010) p. 251

**EMPLOYER-EMPLOYEE RELATIONSHIP**

*Existence of* — The elements to determine the existence of an employment relationship are : (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee's conduct. (S.I.P. Food House *vs*. Batolina, G.R. No. 192473, Oct. 11, 2010) p. 99

*Management's prerogatives* — Although it refers to the right to regulate all aspects of employment, it cannot be understood to include the right to include the right to temporarily withhold salary/wages without the consent of the employee; exceptions. (SHS Perforated Materials, Inc. *vs*. Diaz, G.R. No. 185814, Oct. 13, 2010) p. 580

**EMPLOYMENT, TERMINATION OF**

*Constructive dismissal* — Established if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice by him except to forego his continued employment. (SHS Perforated Materials, Inc. *vs*. Diaz, G.R. No. 185814, Oct. 13, 2010) p. 580

*Doctrine of strained relations* — Under the doctrine, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. (SHS Perforated Materials, Inc. *vs*. Diaz, G.R. No. 185814, Oct. 13, 2010) p. 580

*Illegal dismissal* — Present when the employee was terminated on the basis of a provision in the retirement plan which was not freely assented by the said employee. (Cercado *vs*. Unifrom, Inc., G.R. No. 188154, Oct. 13, 2010) p. 603

*Retirement* — The result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age,

agrees to sever his or her employment with the former. (Cercado *vs*. Unifrom, Inc., G.R. No. 188154, Oct. 13, 2010) p. 603

**ESTOPPEL**

*Estoppel in pais* — Arises when one, by his acts, representations or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and the other rightfully relies and acts on such beliefs so that he will be prejudiced if the former is permitted to deny the evidence of such facts. (Sps. Chung *vs*. Ulanday Construction, Inc., G.R. No. 156038, Oct. 11, 2010) p. 1

*Principle of* — Based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one whom they were directed and who reasonably relied thereon. (Pacific Rehouse Corp. *vs*. EIB Securities, Inc., G.R. No. 184036, Oct. 13, 2010) p. 534

— Does not arise where the representation or conduct of the party sought to be estopped is due to ignorance founded upon an innocent mistake. (Modesto *vs*. Urbina, G.R. No. 189859, Oct. 18, 2010) p. 706

— Rests on the rule that: where a party, by his or her deed or conduct, has induced another to act in a particular manner, estoppel effectively bars the former from adopting an inconsistent position, attitude or course of conduct that causes loss or injury to the latter. (Pacific Rehouse Corp. *vs*. EIB Securities, Inc., G.R. No. 184036, Oct. 13, 2010) p. 534

— The essential elements of estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or at least, which calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted

upon by the other party; and (3) knowledge, actual or constructive of the actual facts. *(Id.)*

**EVIDENCE**

*Expert opinion* — Must be supported by satisfactory proof. (People *vs*. Sally, G.R. No. 191254, Oct. 13, 2010) p. 615

*Substantial evidence* — Required to prove that working conditions have caused or at least increased the risk of contracting the disease. (Panganiban *vs*. Tara Trading Shipmanagement, Inc., G.R. No. 187032, Oct. 18, 2010) p. 675

**EXEMPLARY DAMAGES**

*Award of* — Imposed in criminal cases as part of the civil liability when the crime was committed with one or more aggravating circumstances. (Atizado *vs*. People, G.R. No. 173822, Oct. 13, 2010) p. 427

— To warrant an award of exemplary damages, the act of the offender must be accompanied by bad faith or done in a wanton, fraudulent, or malevolent manner. (Sps. Chung *vs*. Ulanday Construction, Inc., G.R. No. 156038, Oct. 11, 2010) p. 1

**EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (R.A. NO. 3135)**

*Rights of buyer in a foreclosure sale* — The buyer becomes the absolute owner of the property purchased if it is not redeemed within one year after the registration of the sale and as such, he is entitled to the possession of the property and can demand that he be placed in possession at any time following the consolidation of ownership in his name and the issuance to him of a new Transfer Certificate of Title. (Villanueva *vs*. Cherdan Lending Investors Corp., G.R. No. 177881, Oct. 13, 2010) p. 494

*Writ of possession* — May be issued either: 1) within the one-year redemption period, upon filing of a bond, or 2) after the lapse of the redemption period, without need of a

bond or of a separate and independent action. (Villanueva *vs*. Cherdan Lending Investors Corp., G.R. No. 177881, Oct. 13, 2010) p. 494

— The third party may be elected from the property only after he has been given an opportunity to be heard, conformably with the time-honored principle of due process. *(Id.)*

**FORCIBLE ENTRY AND UNLAWFUL DETAINER**

*Action for forcible entry* — Defined as an action to recover possession of a property from the defendant whose occupation thereof is illegal from the beginning as he acquired possession by force, intimidation, threat, strategy, or stealth. (Sarmienta *vs*. Manalite Homeowners Ass'n., Inc., G.R. No. 182953, Oct. 11, 2010) p. 53

*Action for unlawful detainer* — Defined as an action for recovery of possession from the defendant whose possession of the property was inceptively lawful by virtue of a contract (express or implied) with the plaintiff, but became illegal when he continued his possession despite the termination of his right thereunder. (Sarmienta *vs*. Manalite Homeowners Ass'n., Inc., G.R. No. 182953, Oct. 11, 2010) p. 53

*Complaint for* — Only issue to be determined is who between the contending parties has the better right to possess the contested property, independent of any claim of ownership. (Sarmienta *vs*. Manalite Homeowners Ass'n., Inc., G.R. No. 182953, Oct. 11, 2010) p. 53

— To be sufficient, the complaint must recite 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. *(Id.)*

**FORUM SHOPPING**

*Certificate of non-forum shopping* — A certificate under oath by the plaintiff or principal party in the complaint or other initiatory pleading, asserting a claim of relief, or in a sworn certification annexed thereto and simultaneously filed therewith, that: (a) he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed. (Cebu Metro Pharmacy, Inc. *vs*. Euro-Med Laboratories, Phils., Inc., G.R. No. 164757, Oct. 18, 2010) p. 642

**FRAME-UP**

*Defense of* — To prosper, the defense must adduce a clear and convincing evidence to overcome the presumption of regularity of official acts of government officials. (People *vs*. Politico, G.R. No. 191394, Oct. 18, 2010) p. 728

**HUMAN RELATIONS**

*Bad faith* — Burden of proving bad faith rests upon the party alleging the same. (Calibre Traders, Inc. *vs*. Bayer Phils., Inc., G.R. No. 161431, Oct. 13, 2010) p. 350

**INTELLECTUAL PROPERTY CODE (R.A. NO. 8293)**

*Application* — R. A. No. 8293 is the basic law on trademark, infringement, and unfair competition. (Berris Agricultural Co., Inc. *vs*. Abyadang, G.R. No. 183404, Oct. 13, 2010) p. 517

*Certificate of registration of a mark* — Once issued, it constitutes prima facie evidence of the validity of the registration, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the

goods or services and those that are related thereto specified in the certificate. (Berris Agricultural Co., Inc. *vs*. Abyadang, G.R. No. 183404, Oct. 13, 2010) p. 517

*Dominancy test* — Focuses on the similarity of the prevalent or dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the purchasing public. (Berris Agricultural Co., Inc. *vs*. Abyadang, G.R. No. 183404, Oct. 13, 2010) p. 517

*Holistic or totality test* — Necessitates a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. (Berris Agricultural Co., Inc. *vs*. Abyadang, G.R. No. 183404, Oct. 13, 2010) p. 517

*Protection of trademarks* — Intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods. (Berris Agricultural Co., Inc. *vs*. Abyadang, G.R. No. 183404, Oct. 13, 2010) p. 517

*Trademark* — "Collective mark" is defined as any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristics, including the quality of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark. (Berris Agricultural Co., Inc. *vs*. Abyadang, G.R. No. 183404, Oct. 13, 2010) p. 517

**INTERNATIONAL LAW**

*Doctrine of processual presumption* — The party invoking the application of a foreign law has the burden of proving the law. (ATCI Overseas Corp. *vs*. Echin, G.R. No. 178551, Oct. 11, 2010) p. 43

**JUDGES**

*Administrative complaint against judges* — 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. (In the Matter of the Charges of Plagiarism, etc., against Associate Justice Mariano C. Del Castillo, A.M. No. 10-7-17-SC, Oct. 12, 2010) p. 122

*Conduct unbecoming of a judge* — Committed when a judge had a lunch with a lawyer who has a pending case in his sala; sanction. (OCAD *vs*. Judge Lerma, A.M. No. RTJ-07-2076, Oct. 12, 2010) p. 216

*Duties* — Judges are expected to keep abreast of prevailing jurisprudence. (OCAD *vs*. Judge Lerma, A.M. No. RTJ-07-2076, Oct. 12, 2010) p. 216

— Judges are required to decide all cases within three (3) months from date of submission. (*Re*: Cases Submitted for Decision Before Judge Damaso Herrera, RTC, Br. 24, Biñan Laguna, A.M. No. RTJ-05-1924, Oct. 13, 2010) p. 311

— Judges are required to diligently ascertain the facts in every case. (OCAD *vs*. Judge Lerma, A.M. No. RTJ-07-2076, Oct. 12, 2010) p. 216

— Judges must avoid any impression of impropriety to protect the image and integrity of the judiciary. *(Id.)*

*Failure to obey a resolution of the Supreme Court* — Considered a less serious offense that carries a penalty of suspension from office without salary and other benefits for not less than one (1) month or more than three (3) months, or a fine of more than P10,000.00 but not exceeding ₱20,000.00. (OCAD *vs*. Judge Lerma, A.M. No. RTJ-07-2076, Oct. 12, 2010) p. 216

*Gross ignorance of the law* — Classified as a serious offense for which the imposable penalty ranges from a fine to dismissal. (OCAD *vs*. Judge Lerma, A.M. No. RTJ-07-2076, Oct. 12, 2010) p. 216

— To be liable, the assailed order, decision, or actuation of the judge in the performance of official duties must not only be found erroneous, but it must be established that he was motivated by bad faith, dishonesty, hatred or some other similar motive. *(Id.)*

*Gross inefficiency* — Committed in case of failure of a judge to decide cases within the reglementary period, without strong and justifiable reason. (*Re*: Cases Submitted for Decision Before Judge Damaso Herrera, RTC, Br. 24, Biñan Laguna, A.M. No. RTJ-05-1924, Oct. 13, 2010) p. 311

*Gross negligence* — Punishable by dismissal from service or suspension from office for more than three (3) months but not exceeding six (6) months, or a fine of ₱20,000.00 but not exceeding ₱40,000.00. (OCAD *vs*. Judge Lerma, A.M. No. RTJ-07-2076, Oct. 12, 2010) p. 216

*Undue delay in rendering a decision or order* — Sanctions, cited. (*Re*: Cases Submitted for Decision Before Judge Damaso Herrera, RTC, Br. 24, Biñan Laguna, A.M. No. RTJ-05-1924, Oct. 13, 2010) p. 311

(OCAD *vs*. Judge Lerma, A.M. No. RTJ-07-2076, Oct. 12, 2010) p. 216

**JUDGMENT ON THE PLEADINGS**

*Motion for* — Proper when what is left are not genuine issues requiring trial but questions concerning the proper interpretation of the provisions of some written contract attached to the pleadings. (Pacific Rehouse Corp. *vs*. EIB Securities, Inc., G.R. No. 184036, Oct. 13, 2010) p. 534

— Proper where an answer fails to tender an issue or otherwise admits the material allegations of the adverse party's pleading. *(Id.)*

**JUDGMENTS**

*Immutability of judgment doctrine* — As a rule, once a judgment attains finality it thereby becomes immutable and unalterable and it may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of whether the modification is attempted to be made by the Court rendering it or by the highest Court of the land. (Zamboanga Forest Managers Corp. *vs*. New Pacific Timber and Supply Co., G.R. No. 173342, Oct. 13, 2010) p. 403

(Apo Fruits Corp. *vs*. Land Bank of the Phils., G.R. No. 164195, Oct. 12, 2010) p. 251

(Apo Fruits Corp. *vs*. Land Bank of the Phils., G.R. No. 164195, Oct. 12, 2010; *Bersamin, J., dissenting opinion*) p. 251

**JUDICIAL NOTICE**

*Coverage* — Geographical divisions are among matters that courts should take judicial notice of. (B.E. San Diego, Inc. *vs*. CA, G.R. No. 159230, Oct. 18, 2010) p. 630

**JUDICIAL REVIEW**

*Actual case or controversy* — Involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. (Francisco, Jr. *vs*. Toll Regulatory Board, G.R. No. 166910, Oct. 19, 2010)

*Legal standing/locus standi* — Plaintiff must show that: (1) he has 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. (Francisco, Jr. *vs*. Toll Regulatory Board, G.R. No. 166910, Oct. 19, 2010)

— Rule thereon may be relaxed when the subject in issue or the legal question to be resolved is of transcendental importance to the public. *(Id.)*

*Power of* — Can only be exercised in connection with a bona fide controversy involving a statute, its implementation, or a government action. (Francisco, Jr. *vs*. Toll Regulatory Board, G.R. No. 166910, Oct. 19, 2010)

— The limitation on the power of judicial review to actual cases and controversies defines the role assigned to the judiciary in a tripartite allocation of power, to assure that the courts will not intrude into areas committed to the other branches of government. *(Id.)*

**LABOR ARBITER**

*Jurisdiction* — Includes cases of illegal dismissal of a regular employee. (Matling Industrial and Commercial Corp. *vs.* Coros, G.R. No. 157802, Oct. 13, 2010) p. 324

**LAND REGISTRATION ACT (ACT NO. 496)**

*Indefeasibility of title* — No title to registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession. (B.E. San Diego, Inc. *vs.* CA, G.R. No. 159230, Oct. 18, 2010) p. 630

**LOANS**

*Comprehensive or continuing surety* — By its nature, it covers current and future loans, provided that, with respect to future loan transactions, they are within the description or contemplation of the contract of guaranty. (Saludo, Jr. *vs.* Security Bank Corp., G.R. No. 184041, Oct. 13, 2010) p. 569

**MEDIATION**

*Nature* — It is a part of pre-trial and failure of the plaintiff to appear thereat merits sanction on the part of the absent party. (Real Bank, Inc. *vs.* Samsung Mabuhay Corp., G.R. No. 175862, Oct. 13, 2010) p. 446

**MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT (R.A. NO. 8042)**

*Liability of private recruitment agencies for money claims* — Jointly and solidarily liable with their foreign principals; they cannot invoke the immunity from suit of their foreign principals or to wait for the judicial determination of the foreign principals' liability to evade responsibility for the money claims of overseas Filipino workers they deployed abroad. (ATCI Overseas Corp. *vs.* Echin, G.R. No. 178551, Oct. 11, 2010) p. 43

**MOTIONS**

*Motion for clarification* — The Republic's challenge of Vidal's heirship is beyond the ambit of the Supreme Court to determine by mere motion for clarification as it involves

legal and factual matters that need to be established in the expropriation case. (Rep. of the Phils. *vs*. Judge Mangotara, G.R. No. 170375, Oct. 13, 2010) p. 383

**MURDER**

*Commission of* —Attending circumstances qualifying a killing to murder, cited. (Atizado *vs*. People, G.R. No. 173822, Oct. 13, 2010) p. 427

— Civil liabilities of accused, cited. (People *vs*. Sally, G.R. No. 191254, Oct. 13, 2010) p. 615

— Defined as the unlawful killing of a person which is not parricide or infanticide, provided treachery or evident premeditation, inter alia, attended the killing. (Atizado *vs*. People, G.R. No. 173822, Oct. 13, 2010) p. 427

— Imposable penalty. *(Id.)*

**OBLIGATIONS**

*Joint and solidary obligations* — Payment by a solidary debtor entitles him to reimbursement from the other co-debtor. (Asset Builders Corp. *vs*. Stronghold Insurance Co., Inc., G.R. No. 187116, Oct. 18, 2010) p. 692

**OBLIGATIONS, EXTINGUISHMENT OF**

*Legal compensation* — How applied to a contract for a piece of work. (Sps. Chung *vs*. Ulanday Construction, Inc., G.R. No. 156038, Oct. 11, 2010) p. 1

**OVERSEAS EMPLOYMENT**

*Claim for disability benefits* — Under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), 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 a compliance. (Panganiban *vs*. Tara Trading Shipmanagement, Inc., G.R. No. 187032, Oct. 18, 2010) p. 675

(Phil. Transmarine Carriers, Inc. *vs.* Nazam, G.R. No. 190804, Oct. 11, 2010) p. 91

*Death benefits* — Liability of employer is not automatic. (Panganiban *vs*. Tara Trading Shipmanagement, Inc., G.R. No. 187032, Oct. 18, 2010) p. 675

*Occupational diseases* — To be compensable, all of the following conditions must be satisfied: (1) the seafarer's work must involve the risks described in POEA-SEC; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it; and (4) there was no notorious negligence on the part of the seafarer. (Phil. Transmarine Carriers, Inc. *vs.* Nazam, G.R. No. 190804, Oct. 11, 2010) p. 91

— With respect to mental diseases, for the same to be compensable, the POEA-SEC requires that it must be due to a traumatic injury to the head. *(Id.)*

**PLAGIARISM**

*Concept* — Defined as the theft of another person's language, thoughts, or ideas. (In the Matter of the Charges of Plagiarism, etc., against Associate Justice Mariano C. Del Castillo, A.M. No. 10-7-17-SC, Oct. 12, 2010) p. 122

— Excusing lack of attribution to authors due to editorial errors and lack of malicious intent to appropriate renders meaningless the legal provision on infringement of copyright. (In the Matter of the Charges of Plagiarism, etc., against Associate Justice Mariano C. Del Castillo, A.M. No. 10-7-17-SC, Oct. 12, 2010; *Sereno, J., dissenting opinion*) p. 122

— Forms of plagiarism are (1) uncited data or information; (2) an uncited idea whether a specific claim or general concept; (3) an unquoted but verbatim phrase or passage; and (4) an uncited structure or organizing strategy; modes of committing each form. *(Id.)*

— Imprecise citations would just be a case of bad footnoting rather than one of theft or deceit. (In the Matter of the Charges of Plagiarism, etc., against Associate Justice Mariano C. Del Castillo, A.M. No. 10-7-17-SC, Oct. 12, 2010) p. 122

— Presupposes intent and a deliberate, conscious effort to steal another's work and pass it off as one's own. *(Id.)*

*Judicial plagiarism* — Arises when judges author opinions that employ materials from copyrighted sources, such as law journals or books, but neglect to give credit to the author. (In the Matter of the Charges of Plagiarism, etc., against Associate Justice Mariano C. Del Castillo, A.M. No. 10-7-17-SC, Oct. 12, 2010; *Sereno, J., dissenting opinion*) p. 122

— Considered a serious offense classed as "academic dishonesty." *(Id.)*

— May be done through negligence or recklessness without intent to deceive. *(Id.)*

— Types thereof are: (1) Borrowed text: When quoting a legal periodical, law review, treatise or other such source, the judicial writer must surround the borrowed text with quotation marks or use a block quote, and (2) Reference errors: The judge may fail to put quotation marks around a clause, phrase or paragraph that is a direct quote from another's writing even though he cites the author correctly. *(Id.)*

**PLEADINGS**

*Verification* — A pleading is verified by an affidavit that an affiant has read the pleading and that the allegations therein are true and correct as to his personal knowledge or based on authentic records. (Cebu Metro Pharmacy, Inc. *vs.* Euro-Med Laboratories, Phils., Inc., G.R. No. 164757, Oct. 18, 2010) p. 642

— Distinguished from a certificate of non-forum shopping. *(Id.)*

— President of a corporation may sign the verification. *(Id.)*

**PLEDGE AND MORTGAGE**

*Contract of* — The requisites are: (1) That they be constituted to secure the fulfillment of a principal obligation; (2) That the pledger or mortgagor be the absolute owner of the thing pledged or mortgaged; (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose. (Pacific Rehouse Corp. *vs.* EIB Securities, Inc., G.R. No. 184036, Oct. 13, 2010) p. 534

— The thing pledged or mortgaged must be amply and clearly described and specifically identified. *(Id.)*

**PRESUMPTIONS**

*Presumption of integrity of evidence* — Preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. (People *vs*. Gonzaga, G.R. No. 184952, Oct. 11, 2010) p. 65

**PROSECUTION OF OFFENSES**

*Place where action is to be instituted* — Dependent on where the crime was committed. (OCAD *vs*. Judge Lerma, A.M. No. RTJ-07-2076, Oct. 12, 2010) p. 216

**PUBLIC LAND ACT (C.A. NO. 141)**

*Alienable lands* — Mere declaration of land for taxation purposes does not constitute possession therefor nor is it proof of ownership in the absence of the claimant's actual possession. (Modesto *vs*. Urbina, G.R. No. 189859, Oct. 18, 2010) p. 706

— Only a public land reclassified as alienable or actually alienated by the state to a private person can confer ownership or possessory rights. *(Id.)*

**QUALIFYING CIRCUMSTANCES**

*Treachery* — Appreciated when the attack was so swift and unexpected, affording the hapless, unarmed and

unsuspecting victim no opportunity to resist or defend himself. (People *vs*. Sally, G.R. No. 191254, Oct. 13, 2010) p. 615

**RAPE**

*Carnal knowledge* — The mere touching of the external genitalia by the penis, capable of consummating the sexual act is sufficient to constitute carnal knowledge. (People *vs*. Narzabal, G.R. No. 174066, Oct. 12, 2010) p. 299

*Commission of* — To constitute consummated rape, the touching must be made in the context of the presence or existence of an erect penis capable of penetration. (People *vs*. Narzabal, G.R. No. 174066, Oct. 12, 2010) p. 299

**RAPE WITH HOMICIDE**

*Commission of* — Accused liable for moral and exemplary damages. (People *vs*. Narzabal, G.R. No. 174066, Oct. 12, 2010) p. 299

— Both rape and homicide must be established beyond reasonable doubt. *(Id.)*

— Elements of the crime that must concur are: (1) the accused has carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat, or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the accused killed a woman. *(Id.)*

*Imposable penalty* — Death penalty lowered to *reclusion perpetua*, without eligibility for parole due to the effectivity of R.A. No. 9346. (People *vs*. Narzabal, G.R. No. 174066, Oct. 12, 2010) p. 299

**RETIREMENT**

*Retirement age* — Compulsory retirement age below sixty years sustained when both parties agreed thereto. (Cercado *vs*. Unifrom, Inc., G.R. No. 188154, Oct. 13, 2010) p. 603

*Retirement plan* — A retirement plan giving the employer the option to retire its employees below the ages provided by

law must be assented to and accepted by the latter. (Cercado *vs*. Unifrom, Inc., G.R. No. 188154, Oct. 13, 2010) p. 603

**SALES**

*Buyer in bad faith* — Established when he has actual knowledge of facts that would impel a reasonable man to inquire further on a possible defect in the title of the seller. (Sps. Pudadera *vs*. Magallanes, G.R. No. 170073, Oct. 18, 2010) p. 655

*Buyer in good faith* — One who buys the 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. (Sps. Pudadera *vs*. Magallanes, G.R. No. 170073, Oct. 18, 2010) p. 655

*Double sale* — In case of immovable property, ownership shall belong to: (1) the first registrant in good faith; (2) then, the first possessor in good faith; and (3) finally, the buyer who in good faith presents the oldest title. (Sps. Pudadera *vs*. Magallanes, G.R. No. 170073, Oct. 18, 2010) p. 655

**SECURITIES REGULATION CODE (R.A. NO. 8799)**

*Application* — The Code provides for the transfer of jurisdiction over all cases enumerated under Section 5 of P.D. No. 902-A from the Securities and Exchange Commission (SEC) to the Regional Trial Court designated as a Special Commercial Court.(Matling Industrial and Commercial Corp. *vs*. Coros, G.R. No. 157802, Oct. 13, 2010) p. 324

**SHERIFFS**

*Conduct prejudicial to the interest of the service* — Committed in case a sheriff did not follow the proper procedure in enforcing writs of execution. (Argoso *vs*. Regalado II, A.M. No. P-09-2735, Oct. 12, 2010) p. 210

— Considered a grave offense, punishable by suspension of six months and one day to one year for the first offense, and by dismissal for the second offense. *(Id.)*

*Duties* — In implementing a writ, the sheriff should provide an estimate of the expenses to be incurred, subject to the approval by the court. (Argoso *vs*. Regalado II, A.M. No. P-09-2735, Oct. 12, 2010) p. 210

**SURETYSHIP**

*Contract of* — In essence, suretyship contains two types of relationship – the principal relationship between the obligee and the obligor, and the accessory surety relationship between the principal and the surety. (Asset Builders Corp. *vs.* Stronghold Insurance Co., Inc., G.R. No. 187116, Oct. 18, 2010) p. 692

*Liability of surety* — Although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor or promise of the principal is said to be direct, primary, and absolute; in other words, he is directly and equally bound with the principal. (Asset Builders Corp. *vs*. Stronghold Insurance Co., Inc., G.R. No. 187116, Oct. 18, 2010) p. 692

— The obligor's resort to rescission of the principal contract for failure of the obligor to perform its undertaking does not automatically release the surety from any liability. *(Id.)*

**TAXATION**

*Notice of assessment* — The formal letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the fact, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise the formal letter of demand and the notice of assessment shall be void. (Commissioner of Internal Revenue *vs*. Sec. of Justice Gonzalez, G.R. No. 177279, Oct. 13, 2010) p. 462

*Tax amnesty* — Defined as a general pardon to taxpayers who want to start a clean tax slate and it must be construed strictly against the taxpayer and liberally in favor of the taxing authority. (Commissioner of Internal Revenue *vs*. Sec. of Justice Gonzalez, G.R. No. 177279, Oct. 13, 2010) p. 462

*Tax assessment* — May be protested by filing a request for reconsideration or reinvestigation within thirty (3) days from receipt of the assessment by the taxpayer; effect of failure to file. (Commissioner of Internal Revenue *vs*. Sec. of Justice Gonzalez, G.R. No. 177279, Oct. 13, 2010) p. 462

*Tax evasion* — The crime is complete when a fraudulent return is knowingly and willfully filed with intent to evade and defeat the tax. (Commissioner of Internal Revenue *vs*. Sec. of Justice Gonzalez, G.R. No. 177279, Oct. 13, 2010) p. 462

— The lack of consent of the taxpayer under investigation does not imply that the Bureau of Internal Revenue obtained the information from third parties illegally or that the information received is false or malicious. *(Id.)*

**TESTIMONIES**

*Weight of* — An affirmative testimony coming from a credible witness without motives to perjure is far stronger than a negative testimony. (People *vs*. Politico, G.R. No. 191394, Oct. 18, 2010) p. 728

**URBAN LAND REFORM LAW (P.D. NO. 1517)**

*Application* — Non-legitimate tenant cannot avail of the benefits of the law no matter how long the possession of the subject property was. (B.E. San Diego, Inc. *vs*. CA, G.R. No. 159230, Oct. 18, 2010) p. 630

**VALUE-ADDED TAX**

*Imposition of VAT on non-bank financial intermediaries like pawnshops* — Rule thereon, cited. (H. Tambunting Pawnshop, Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 172394, Oct. 13, 2010) p. 392

— The consecutive deferments of the effectivity date of the application of the VAT on pawnshops resulted in their non-liability for VAT during the affected taxable years. *(Id.)*

*Tax refund or issuance of tax credit certificate for unutilized input VAT* — Failure to print the word "zero-rated" on the

invoices/receipts is fatal to a claim for credit/refund of input VAT on zero-rated sales. (J.R.A. Phils., Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 177127, Oct. 11, 2010) p. 33

**WAGES**

*Value of the board and lodging as deduction from* — Requires: (1) proof that such facilities are customarily furnished by the trade; (2) voluntary acceptance in writing by the employees of the deductible facilities; and (3) proof of the fair and reasonable value of the facilities charged. (S.I.P. Food House *vs*. Batolina, G.R. No. 192473, Oct. 11, 2010) p. 99

**WILLS**

*Attestation clause* — Absent the required avowal by the witnesses themselves, no attestation clause can be deemed embodied in the acknowledgement of the deed of donation *mortis causa*. (Echavez *vs*. Dozen Construction and Dev't. Corp., G.R. No. 192916, Oct. 11, 2010) p. 108

— Distinguished from acknowledgment. *(Id.)*

— Must contain the number of pages upon which the deed was written. *(Id.)*

**WITNESSES**

*Credibility of* — Determination of the trial court, especially when affirmed by the appellate court is accorded great respect; exceptions. (People *vs*. Politico, G.R. No. 191394, Oct. 18, 2010) p. 728

(People *vs*. Sally, G.R. No. 191254, Oct. 13, 2010) p. 615

(Atizado *vs*. People, G.R. No. 173822, Oct. 13, 2010) p. 427

(People *vs*. Gonzaga, G.R. No. 184952, Oct. 11, 2010) p. 65

— Not affected by discrepancies in their testimonies referring to minor details and collateral matters. *(Id.)*

— Positive and categorical declarations of prosecution witnesses deserve full faith and credence in the absence of ill motive. *(Id.)*

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